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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 225.

WARNER VAN NORDEN, APPELLANT,

vs.

LEVI P. MORTON, GEORGE BLISS, AND GEORGE S. BOWDOIN, AS MORTON, BLISS & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 12, 1876.

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1 *Bill of complaint.—Filed June 22d, 1875.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

WARNER VAN NORDEN
versus
MORTON, BLISS AND CO. } No. 7443.

To the honorable the judges of the United States circuit court for the fifth circuit and district of Louisiana, sitting in chancery:

Humbly complaining, your orator, Warner Van Norden, a citizen of the United States and of the State of Louisiana, residing in the city of New Orleans, in said State, respectfully represents:

That heretofore, to wit, on or about the 22d day of November, A. D. 1872, your orator for a valuable consideration, and in due course of trade and business, purchased from the Mississippi and Mexican Gulf Ship Canal Company a certain dredge-boat, known and designa-
2 ted as No. three, then lying and being within the corporate limits of the city of New Orleans, with certain derricks and appurtenances; that the amount thus paid was a full and adequate consideration and price for the boats, &c., thus purchased and acquired; that the dredge-boat aforesaid, with the derricks and appurtenances, at the time of the said sale and transfer, was put into the actual possession and control of your orator; and from the time of the purchase and acquisition of said boat down to the present time, and constantly and continuously, the said boat has been in the legal and actual possession of your orator, and subject to his order and control; all of which will more fully and at large appear, from a certified copy of the authentic act of transfer of the said boat, made and executed before Andrew Hero, j'r, a notary public of said city of New Orleans, on the 22d day of November, A. D. 1872, hereunto annexed for greater certainty, and from other evidence to be produced upon the trial of this cause.

3 Further complaining, your orator shows unto your honors that Morton, Bliss & Co., bankers, transacting and doing business in the city of New York, in the State of New York, and composed of Levi P. Morton, George Bliss, and George S. Bowdoin, all citizens of the United States, and of the State of New York, residing in said city of New York, in a certain suit known on the law-docket of this honorable court as No. 7032, wherein said Morton, Bliss & Co. are plaintiffs, and the Mississippi and Mexican Gulf Ship Canal Company is defendant, have recovered a judgment against the said company for twenty-four thousand eight hundred and seventy-four $\frac{30}{100}$ dollars, with 7 per cent. interest from May 28th, 1874, until paid, and cost of suit, and that under and by virtue of a writ of fieri facias issued upon the said judgment, the aforesaid Morton, Bliss & Co., and S. B. Packard, U. S. marshal in and for the State of Louisiana, have seized and taken into the possession and control of said marshal the aforesaid dredge-boat, and
4 will proceed to advertise and sell the same at marshal's sale under the aforesaid writ of fieri facias unless enjoined and restrained from so doing by this honorable court; all of which will more fully and at large appear from the aforesaid judgment, writ of fieri facias, and the acts and doings of the marshal aforesaid under such writ, to be duly shown and established upon the trial of this cause.

Now your orator further complaining shows unto your honors that

the seizure of the aforesaid boat, under the proceedings and writ aforesaid, are inequitable, unjust, illegal, and absolutely null and void, for the following reasons, to wit:

1st. The legal title to the aforesaid dredge-boats having been vested in your orator by an authentic act, and your orator being in possession of such boat under and by virtue thereof, the said defendants, Morton, Bliss & Co., can neither legally nor equitably seize or sell the same, or cause the said boat to be seized or sold under a writ of fieri facias issued in their favor and against the Mississippi and Mexican
5 Gulf Ship Canal Company.

2d. Your orator is the legal and equitable owner and holder of the said dredge-boat acquired in due course of business, and for a just and reasonable compensation paid therefor, and cannot be disturbed in his ownership and title to the same; nor is the said boat, being the property of your orator thus acquired, liable to be seized or taken, in payment or satisfaction of the claim or judgment pretended to be held by the said defendants against the Mississippi and Mexican Gulf Ship Canal Company.

Further complaining, your orator shows into your honors that the unjust, illegal, and vexatious conduct of said defendants in seizing as aforesaid the boat and property of your orator has subjected your orator to a damage and loss of not less than five thousand ($5,000) dollars, and that if such conduct and illegal acts of the said defendants be permitted to continue your orator will sustain an additional loss
6 and damage in a like amount, as your orator will more fully show by his evidence to be introduced upon the trial of this cause.

And your orator further shows unto your honors that he has called upon and requested the said defendants to vacate and set aside the aforesaid illegal seizure, and abstain from interfering with your orator's ownership and possession of the dredge-boat aforesaid, and everything connected therewith and appurtenances thereto, but that they, the said defendants, have neglected and refused, and, still do neglect and refuse, to comply with your orator's most reasonable and equitable demand.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of law, and can only obtain relief in this honorable court, where matters of this nature are properly relievable and cognizable:

To the end therefore that the said Morton, Bliss & Co., and the several members of the said firm, viz, Levi P. Morton, George Bliss, and George S. Bowdoin, and S. B. Packard, United States marshal of
7 the district and State of Louisiana, may be decreed to abstain from seizing, taking, holding, or in any way or manner interfering with your orator in the ownership and possession of the aforesaid dredge-boat, her tackle, apparel, and furniture, and everything belonging or appertaining thereto; that your orator be fully quieted and maintained in his title to and possession of the said boat, and the tackle, apparel, furniture, and everything belonging or appurtenant to the same; that the said defendants may be jointly and severally decreed to pay unto your orator for damages to be shown upon the trial of this cause to have been sustained by him the sum of five thousand dollars ($5,000), or such other sum as your orator may be justly and equitably entitled to demand in the premises, and that your orator may have such other and further relief as the nature of the case may require, and shall be agreeable to equity;

And that said Morton, Bliss & Co. and the several members of said firm, their attorneys, officers, and agents, S. B. Packard, United States

marshal, his employees, assistant, and deputies, may be restrained
8 by an injunction to be issued from this honorable court from seizing, holding, or keeping under seizure or otherwise, the aforesaid dredge-boat number three, her tackle, apparel, furniture, and everything belonging or appertaining thereto; and be further enjoined and restrained from interfering, in any way or manner, directly or indirectly, with your orator's claim of ownership, and his possession and control of the said boat and her aforesaid fixtures and appurtenances:

May it please your honors to grant unto your orator the writ of subpœna, to be directed to Morton, Bliss & Co. and the several members of said firm, viz, Levi P. Morton, George Bliss, and George S. Bowdoin, and S. B. Packard, United States marshal, commanding them and each of them by a certain day, and under a certain penalty therein to be inserted, to be and appear before this honorable court, and then and there to answer the premises; and further to stand and abide by such order and decree therein as shall be agreeable to equity and good conscience.

9 And your orator, as in duty bound, will ever pray, &c.

(Signed) W. VAN NORDEN,
Complainant.

(Signed) LACEY & BUTLER,
Solicitors.

STATE OF LOUISIANA,
City of New Orleans:

Warner Van Norden, the complainant in the foregoing bill of complaint named, being duly sworn, doth depose and say that the facts, allegations, and averments set forth and contained in said bill are true, to the best of his knowledge, information, and belief.

(Signed) W. VAN NORDEN.

Sworn to and subscribed before me this 19th day of June, A. D. 1875.

[SEAL.] (Signed) CH'S S. RICE,
U. S. Comm'r, Dist. of La.

Considering the agreement on file, it is ordered that an injunction issue, as prayed for in the bill, upon complainant giving bond in the sum of $16,000, with good and solvent security, conditioned as the law directs.

(Signed) W. B. WOODS,
Judge.

10 Service of subpœna waived, and notice of application for restraining order accepted.

(Signed) CARLETON HUNT &
WILLIAM H. HUNT,
Solicitors for Morton, Bliss.

Answer.—Filed July 21st, 1875.

U. S. c't c't. In equity.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

The joint and several answers of Levi P. Morton, George Bliss, and Geo. S. Bowdoin, defendants, to the bill of complaint of Warner Van Norden.

The above-named defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say:

That these respondents deny the allegation in said bill that the com-

plainant did purchase, for a valuable consideration and in due course of trade and business, the dredge-boat No. 3, with its appurtenances, &c., as set forth in said complainant's bill; they aver that whatever consideration and price may have been paid by said complainants, should there have been any, as to which these respondents are ignorant, that such consideration and price was neither full nor adequate, and did not operate and could not operate to the prejudice of the rights of these respondents, in and upon the said dredge-boat, &c., hereinafter set forth; and they aver that if said boat, &c., have been reduced into the possession of the complainant, said possession cannot operate to defeat, injure, or impair the right of these respondents in, to, and against the same.

11

These respondents, further answering, admit that they did recover judgment against the Mississippi and Mexican Gulf Ship-Canal Company for the sum of twenty-four thousand eight hundred and seventy-four $\frac{20}{100}$ dollars ($24,874\frac{20}{100}$) with interest, as set forth in said complainant's bill, and that under and by virtue of said judgment they did cause to be seized and were about to proceed to advertise and sell by the marshal of this court the said boat, appurtenances, &c., in order to satisfy the balance remaining due upon said judgment ($12,437\frac{41}{100}$) with interest from May 28th, 1873, but that they have been prevented from so doing by the order of your honors enjoining and restraining them.

12

And these respondents, further answering, say that said seizure and the proceedings under said writ are not inequitable, unjust, or illegal, as in said bill alleged; and respondents further say that whatever title may have been vested in said complainant by the pretended authentic act set forth in said bill was inoperative and null and void, in so far as the same sought to confer upon said complainant any adversary right in and to the said dredge-boat No. 3, its appurtenances, &c., to the prejudice of the rights of these respondents in and to the same.

And these respondents, further answering, show that the said dredge-boat, its appurtenances, &c., purported to be sold, granted, and conveyed on the eighth day of May, 1872, by the Mississippi and Mexican Gulf Ship-Canal Company to these respondents, in order to secure to them the payment of a certain sum of money that had been advanced by these respondents to the said company, and that the balance now due to these respondents, under their judgment against said company, constituted a portion of the sum so advanced by respondents, and to secure which the said dredge-boat, appurtenances, &c., purported to be conveyed to respondents, in proof whereof these respondents crave leave to refer to the indenture hereto annexed as part of this answer, marked "Exhibit No. 1."

13

And these respondents, further answering, show that the pretended authentic act under which the complainant asserts title in and to said dredge, &c., was passed subsequent to the execution of the indenture and conveyance to these respondents aforesaid, dated May 8th, 1872; that the complainant was well aware of the existence and nature of the said indenture and of the title purporting to be thereunder conferred on these respondents; that whatever rights may have been conferred upon the said complainant thereafter were subservient and subordinate to the rights of these respondents; that the said complainant agreed and promised that these respondents should have and enjoy, unimpaired by any temporary possession on his part, the right and privilege to seize and sell the said dredge-boat No. 3, her derrick, machinery, appurtenances, &c., to satisfy the debt of said company to

14

these respondents, in accordance with the terms of the indenture aforesaid.

And that the complainant was then aware of the claim of these respondents, and that the pretended sale of the said dredge boat, her appurtenances, &c., was only procured to be passed upon an express promise and undertaking upon the part of said complainant to redeem said property from the pledge with which the same purported to have been burthened in favor of respondents, and to pay the debt of these respondents.

And further answering, these respondents say that they deny that the said complainant has been or will be subjected to any loss or injury whatever by reason of the seizure effected under the writ of fieri facias, and that the injunction prayed for ought not to issue.

15 And this defendant submits to this honorable court that all and every of the matters in the said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said plaintiff as not entitled to any relief from a court of equity, and these defendants hope they shall have the same benefit of this defence as if they had demurred to said plaintiff's bill.

And said defendants say that they deny all and all manner of unlawful combination and confederacy wherewith they or any of them stand charged by the said bill, without this, that there is any other matter, cause, or thing in said complainant's bill contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge of these defendant; all which matters and things these defendants are willing to aver, maintain,

16 and prove as this honorable court shall direct, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) C. HUNT,
(do.) WILLIAM H. HUNT,
Solicitors.

JAMES A. LAFITTE, being solemnly sworn, says:

That he is a member of the firm of J. B. Lafitte & Co.; that they are the agents and attorneys in fact of the above-named defendants, and that said defendants are absent from this State; that what is contained in this their answer, as far as concerns their own act and deed, is true to the knowledge of themselves and of affiant, and that what relates to the act and deed of any other person or persons affiant believes to be true.

(Signed) JA'S A. LAFITTE.

Subscribed and sworn before me July 21st, 1875.

(Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court.

17 *Exhibit No. 1.—Referred to in answer of defendant.*

This indenture, made and entered into this the 8th day of May, 1872, by and between the Mississippi and Mexican Gulf Canal Company, a duly organized corporate body of the State of Louisiana, domiciled in the city of New Orleans, hereby represented by Cyrus Bussey, its treasurer, party hereto of the first part, and Mess'rs Morton, Bliss & Co., a

copartnership of the city of New York, State of New York, parties hereto of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of ten dollars in hand paid by said parties of the second part, have sold, and by these presents doth grant and convey, to the said parties of the second part and their assigns all and singular that certain dredge-boat and derrick machinery now laying and being in the city of New Orleans, in the drainage canal known as Poydras street, together with the boilers, engines, machinery attached to said boat and derrick machinery, or either of them.

Whereas the said Morton, Bliss & Co. have consented and agreed to accept certain drafts of said Mississippi and Mexican Gulf Ship Canal Company, drawn by its treasurer, Cyrus Bussey, upon said Mor-
18 ton, Bliss & Co., dated at New Orleans, L'a, on the day and date hereof, and payable at ninety days after date, amounting to seventy-one thousand dollars: Now, therefore, this conveyance is intended to secure the said Morton, Bliss & Co., in the event of the failure of the said Mississippi and Mexican Gulf Ship Canal Company to meet and take up or pay the aforesid drafts or acceptances at their maturity, and if the said Mississippi and Mexican Gulf Ship Canal Company shall pay or provide the necessary funds for the payment of said drafts or acceptances at maturity, then these presents shall become null and void, and of no effect. But if default in the payment of said drafts or acceptances, or either of them, shall be made by said Mississippi and Mexican Gulf Ship Canal Company, it shall be lawful for, and said Morton, Bliss & Co. are hereby authorized to cause all and singular the aforesaid dredge-boat, and said derrick machinery, boilers, engines of said boats, or either of them, heretofore described and herein mortgaged, to be seized and sold, under executory process issued by any competent court, to the highest bidder for cash, and to apply the proceeds
19 arising from such sale or sales to the payment of said drafts, or acceptances, or such balance as may be due and owing thereon.

In faith whereof the said Cyrus Bussey, in his capacity of treasurer, and for and in behalf of said Mississippi and Mexican Gulf Ship Canal Company has hereto set his hand this 8th day of May, 1872.

(Signed) CYRUS BUSSEY,
Treas. M. & M. G. S. C. Co.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this eighth day of May, A. D. eighteen hundred and seventy-two, before me, John G. Eustis, notary public, in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared at my office in said city of New Orleans, in person, Cyrus Bussey, treasurer of the Mississippi and Mexican Gulf Ship Canal Company, to me personally known, and acknowledged that he executed the above instrument in his said capacity, and as and for the act and deed of the Mississippi and Mexican Gulf Ship Canal Company, and for the uses and purposes
20 and considerations therein mentioned.

As witness my hand and seal this 8th May, 1872.

[SEAL.] (Signed) J. G. EUSTIS,
Not. Pub.

Registered in conveyance book 104, folio 669.
New Orleans, April 6th, 1875.
[SEAL.] (Signed) C. R. FISH, *Reg.*

Entry at July rules.—Extract from chancery order-book, July 21st, 187 .

WARNER VAN NORDEN }
vs.
MORTON, BLISS & CO. }

Levi P. Morton, George Bliss, and George S. Bowdoin, defendants herein, have this day by their solicitors, C. Hunt and W'm H. Hunt, filed their joint and several answers to the complainant's bill.

Replication.—Filed December 2d, 1875.

U. S. circuit court, fifth circuit, district of Louisiana.

WARNER VAN NORDEN }
vs. } No. 7443.
MORTON, BLISS & CO. }

21 The replication of Warner Van Norden, complainant, to the answer of respondents, Morton, Bliss & Co.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto, saith:

That this repliant is not fully informed in relation to all the facts and circumstances connected with the instrument pretended to have been made and executed in favor of defendants, Morton, Bliss & Co., on the 8th day of May, 1872, and therefore is unable to make any averment or allegation in reference thereunto except such allegations and averments as may be hereinafter set forth and contained.

This repliant further says that neither before nor at the time of the transfer by the Mississippi and Mexican Gulf Ship Canal Company to complainant, bearing date the 22d day of November, A. D. 1872, and referred to in complainant's bill of complaint, nor for a long time
22 subsequent to such transfer, was repliant aware of the character or extent of the instrument bearing date May 8th, 1872, relied on by respondents in their answer, nor of respondents' pretensions and claims under and by virtue of the same; that down to the summer of 1873, repliant was entirely uninformed and ignorant of the details of the act or instrument hereinabove last referred to, and it was only at that late hour and after this repliant had in good faith and for a valuable consideration acquired under the transfer to him, bearing date November 22d, 1872, that he became informed of the details of the aforesaid act of May 8th, 1872, and of respondents' pretensions and claims under the same.

This repliant generally, specially, and unqualifiedly denies that he agreed or promised that respondents should have and enjoy, unimpaired by repliants' possession, or under any circumstances whatever, the right and privilege to seize and sell dredge-boat No. 3, her derrick, machinery, appurtenances, &c., to satisfy the debt of said company to respondents, in accordance with the terms of the aforesaid pretended
23 instrument bearing date as aforesaid May 8th, 1872, and also in the like manner denies that such instrument was, in any way or manner, directly or indirectly brought about, procured, or obtained upon the promise or undertaking of this repliant, expressly or impliedly given, to redeem said property from the pledge pretended to have been

and to be held by respondents, Morton, Bliss & Co., or any other person or persons whomsoever, or to pay the debt which might be due and owing from the Mississippi and Mexican Gulf Ship Canal Company to respondents, or any other debt or liability whatsoever.

This repliant further says that if the act or instrument relied on by respondents in their answer to complainant's bill of complaint, bearing date as aforesaid on the 8th day of May, 1872, was made and executed in the State of New York, as repliant is informed was the case, under the laws of that State, it was wholly inoperative and void in giving to respondents any right, lien, or privilege to or upon the dredge-boats and derricks, together with the machinery, apparel, furniture, appurtenances, and other necessaries thereunto belonging, set forth and designated in the transfer to repliant, bearing date November 22d, 1872; that
24 the same was not made and executed according to the formalities and requirements of the laws of the State of Louisiana, nor was the same registered or recorded as required by such laws, nor was any legal or equitable vitality imparted to such instrument so as to subject the dredge-boats and appurtenances aforesaid, in the hands and possession of repliant, and by him duly acquired and purchased in the State of Louisiana, in good faith in due course of business, and for an adequate and valuable consideration by him paid, to any right, claim, lien, privilege, or preference in favor of respondents.

This repliant further says that if it be true that the said respondents under and by virtue of the aforesaid instrument, bearing date the 8th day of May, 1872, did have and acquire a lien and privilege upon Dredge-boat No. 3, its apparel and appurtenances, which, however, is particularly denied, then this repliant avers that the indebtedness from the Mississippi and Mexican Gulf Ship Canal Company to respondents Morton, Bliss & Co. has been merged upon the application of the latter into a mere monied and ordinary judgment; and that the effect of such judgment was to cancel and extinguish any lien, privilege, prior-
25 ity, or preference which the said respondents might otherwise have had upon and against the said dredge-boat, its apparel, fixture, and appurtenances.

Further this repliant says that if all the matters and things set forth and contained in respondents' answer are true, they did not authorize the said respondents to proceed against the boat and appurtenances referred to in complainant's bill of complaint by a direct seizure, and in absence of a decree invalidating repliant's title, and that as such matters and things do not form a good, sufficient, and equitable defence to complainant's bill of complaint they might well have been demurred or excepted to, and under a demurrer or exception have been stricken out by the court and an order pro confesso entered, and thus repliant shows the court that he is now entitled to relief against such allegations and averments to the same extent as if a demurrer or exception had been filed to respondent's answer.

This repliant further says that the said respondents, by the statute of limitation, or prescription of two years established by the laws of Louisiana, and in that State having full force and effect, is pre-
26 cluded from questioning and invalidating, in any way or manner judicially or extra-judicially, repliant's title and possession, as acquired by him under and by virtue of the aforesaid act or conveyance, from the Mississippi and Mexican Gulf Ship Canal Company to this repliant hereinabove particularly referred to, and this repliant hereby pleads such limitation or prescription against the demand and attempt of respondents to seize and sell the dredge-boat and appurtenances in

controversy, and against the answer filed by them to complainant's bill of complaint.

And for further replication this repliant says that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, avoided, traversed, or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct.

27 And repliant humbly prays as in and by his said bill he hath already prayed.

W. VAN NORDEN,
Repliant.

(Signed) LACEY & BUTLER,
Solicitors.

STATE OF LOUISIANA,
City of New Orleans:

Warner Van Norden, the repliant in the foregoing replication named, being duly sworn, doth depose and say that the facts and allegations set forth and contained in the foregoing replication are true to the best of his knowledge, information, and belief.

(Signed) W. VAN NORDEN.

Sworn to and subscribed to before me this 1st day of December, A. D. 1875.

(Signed) CHA'S S. RICE,
U. S. Comm'r Dist. of La.

Entry at December rules.—Extract from chancery-order book, December 2d, 1875.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

28 The complainant, by his solicitors Lacey and Butler, has this day filed his replication to the answer of the defendants.

Amendment to replication.—Filed February 28th, 1876.

United States circuit court, district of Louisiana.

WARNER VAN NORDEN.
vs.
MORTON, BLISS & CO.

It is hereby understood and agreed that complainant's replication be considered as amended by charging the prescription, or statute or limitation of one year, under the laws of the State of Louisiana against any and every attempt on the part of defendants to annul, weaken, or impair the act of transfer under which complainant acquired the dredge-boat, derricks, &c., referred to in complainant's bill of complaint.

The plea of prescription of one year herein provided for, to be re-

garded as pleaded and relied upon, in addition to the prescription already averred in the aforesaid replication.

New Orleans, February 28th, 1876.

(Signed) LACEY & BUTLER,
Solicitors for Complainant.

29 It is hereby agreed that the amendment herein is to be considered as pleading the prescription of one year in addition to the prescription heretofore pleaded.

N. O., Feb'y 28th, 1876.

(Signed) CARLETON HUNT,
Respondent's Sol'r.

Motion and order, time enlarged to take testimony—F. A. Woolfley, esq., appointed special examiner.—Extracts from the minutes November term, 1875.

NEW ORLEANS, *Wednesday, March 1st*, 1876.

Court met pursuant to adjournment.

Present, Hon. W. P. Woods, circuit judge.
" " E. C. Billings, district judge.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

Now come respondent's solicitors, Carleton Hunt and William H. Hunt, and upon showing to the court that the parties hereto have failed to agree to take testimony orally as they had expected to agree, it is ordered that F. A. Woolfley be appointed examiner, and that the time
30 for taking testimony herein be enlarged to the 15th day of April proximo.

Interrogatories by defendant.—Filed March 2d, 1876.

U. S. c't c't. In equity.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

Interrogatories to be administered to witnesses to be produced, sworn, and examined in a certain cause depending in the circuit court of the United States, wherein Warner Nan Norden is complainant, and Morton, Bliss & Co. are defendants, on the part and behalf of the said defendants, that is to say:

First interrogatory. Do you know the parties, complainants and defendants in the title of these interrogatories named, and any or which of them, and how in connection with the Mississippi and Mexican Gulf Ship Canal Company, and a certain dredge-boat No. 3, employed in the drainage of this city, and were you connected with the Mississippi and Mexican Gulf Ship Canal Company, and if so, how?

Second interrogatory. Did or did not the Mississippi and Mex-
31 ican Gulf Ship Canal Company pass a resolution in your presence, or in the presence of any other person or persons, directors

of said company, on or about November 20th, 1872, to transfer the said dredge-boat No. 3 and and other dredge-boats, blacksmith's shops, carpenter's shops, derricks, and other personal property to the said Warner Van Norden, and if so, under what circumstances, for what consideration, and with what understanding as to the then existing rights of the creditors of said company, and particularly of Morton, Bliss & Co., the defendants herein was said resolution passed?

Third interrogatory. Do you know of a certain pledge of the said dredge boat No. 3, made to Morton, Bliss & Co., the defendants, by the Mississippi and Mexican Gulf Ship Canal Company May 8th, 1872, marked Exhibit 1, and hereunto annexed, and to defendant's answer (transcribed on page 17 of this transcript), and by whom it was made in behalf of said company, and to secure what debt, and whether the said
32 debt has been paid and discharged; and whether *the said debt has been paid and discharged; and whether* the said debt was or was not in the debts due by the said company at the time of the passage of the said resolution; and whether or not it was covenanted and agreed that the said debt, and the said pledge of dredge boat No. 3, should be assumed and paid by Warner Van Norden, the complainant?

Fourth interrogatory. Who were the directors of the Mississippi and Mexican Gulf Ship Canal Company; and were all of them or any of them present at the meeting in the second interrogatory referred to, and were you present; and were you present at any other meeting, formal or informal, of the directors of said company, or any, and which of them, and Warner Van Norden, to take into consideration or give effect to the said resolution, and do you know whether or not anything was then and there said about the creditors of the said company, and among them Morton, Bliss & Co. in particular, and the said dredge boat No.
33 3. and the understanding and statements of the said Warner Van Norden in relation thereto; and in consideration of the pledge thereof; and whether the act of November 22d, 1872, before A. Hero, notary public, purporting to transfer the said dredge boat, other boats, and property of the said company to the said Van Norden, which act is hereto annexed as Exhibit No. 2, was not passed in pursuance of said resolution of November 20th, or thereabouts, and the subsequent meeting, and understanding, and agreement with the said Warner Van Norden; and also whether you or anybody else present made any record of any such subsequent meeting, and what that was?

Fifth interrogatory. Are you acquainted with a certain agreement between the Mississippi and Mexican Gulf Ship Canal Company and Warner Van Norden of May 18th, 1872, providing among others for the transfer unto the said Van Norden of dredge boats 1, 2, & 4 of the said company as additional security for the money to be advanced by him? (Said agreement is annexed as Exhibit No. 3.) Do you know by
34 what authority said agreement was entered into, and why the dredge-boat No. 3, pledged according to Exhibit No. 2, was not included with the other dredge boats of the company?

Sixth interrogatory. Are you acquainted with the notarial act of November 23rd, 1872, purporting among other things to pay unto Warner Van Norden $15,000 monthly out of the revenues of the Mississippi and Mexican Gulf Ship Canal Company, and after deducting 20% of the remainder of such revenues, to the extinction of the indebtedness of the said company to the said Warner Van Norden according to the act of the 22d May, 1872? (Said act of November 23rd, 1872, is annexed as Exhibit No. 4.) Who were the creditors referred to in this exhibit, and were the defendants, Morton, Bliss & Co., pledgees of the dredge boat

No. 3 under the act of May 8th, 1872, among them, and who was to keep the accounts of receipts and expenditures under this act of November 23rd, 1872, and have such accounts been rendered, and what do they show; and did you ever hear said Warner Van Norden say that
35 the dredge boats and machinery of the said company were only to be held by him until he could work out his claim, when he would retransfer them to the company, or make any statement to that effect, and state that it made no difference what price was named for them, or any similar statement or statements? If yes, state when and where he made such statements.

Seventh interrogatory. Was Cyrus Bussey treasurer of the Mississippi and Mexican Gulf Ship Canal Company when the pledge of May 8th, 1872, of the dredge boat No. 3 was made to Morton, Bliss & Co., and did he ever say in your presence that said pledge was worthless and fraudulent or anything to that effect?

Eighth interrogatory. Do you know of any other matter or thing, or can you say anything touching the matters in question in this cause that may tend to the benefit of the defendants in this cause? If yea, state the same as fully and at large as if you had been particularly inter-
36 rogated in relation thereto.

(Signed) CARLETON HUNT,
WILLIAM H. HUNT,
Solicitors for Def'ts.

Exhibit No. 2 referred to in and made of interrogatory fourth.

STATE OF LOUISIANA,
Parish & City of New Orleans:

Be it known that on this twenty-second day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh, before me, Andrew Hero, j'r, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned personally came and appeared Lafayette Folger, the president, and Samuel D. Moody, the secretary of the Mississippi and Mexican Gulf Ship Canal Company, a duly organized corporate body of this State, domiciled in this city and herein acting in their said capacities and for and on behalf
37 of said Mississippi and Mexican Gulf Ship Canal Company, under and by virtue of a resolution of the board of directors thereof, passed at their meeting held on this day; a duly certified copy of which said resolution is hereto annexed for reference. Which said Mess'rs Folger and Moody declared, in their said capacities, and for and on behalf of said Mississippi and Mexican Gulf Ship Canal Company, that for the consideration and on the terms and conditions hereinafter expressed, they do by these presents grant, bargain, sell, convey, transfer, assign and set over, with all legal warranties, unto Warner Van Norden, also of this city, here present, accepting and purchasing for himself, his heirs, and assigns, and acknowledging delivery and possession thereof, all and singular the following described dredge-boats and derricks, together with the machinery, engine tackle, apparel, and appurtenances, and all other necessaries thereto belonging, together with the hereinafter mentioned and described articles of personal property, viz:

Dredge-boat No. 1, with steam-derrick, now lying and being
38 and used and employed in the drainage canal of this city, known and designated as the Upper Line Canal.

Dredge-boat No. 2, with steam-derrick, now lying and being and used and employed in the drainage canal of this city, known and designated as the Orleans street draining canal.

Dredge-boat No. 3, with steam-derrick, now lying and being used and employed in the drainage canal of this city, known and designated as the Hagan avenue canal, and near the Poydras draining canal.

Dredge-boat No. 4, with steam-derrick, now lying and being at or near the lake end of the new canal, and used or employed in the construction of the Lake Protection Levee.

Dredge-boat, known as the Ridge-boat, which was purchased from the city of New Orleans, now lying and being or used and employed in the draining canal of this city, known and designated as the Upper Line Canal.

Dredge-boat styled the J. O Noyes, now lying and being, or used and employed in the draining canal of this city, known as the Carrol-
39 ton avenue canal, and near the Poydras street draining canal.

Dredge-boat styled "Clam-shell Dredge,' now lying and being, or used and employed in draining canal of this city, known and designated as the Upper Line Canal.

One barge in said Upper Line Canal, attached to and working with the aforesaid derrick and dredge-boat No. 1.

Three flatboats, five skiffs, two mules, two horses, one wagon, two drays.

The steam-tug Olive, of the burthen of eight tons, or thereabout, now lying at the lake end.

Blacksmith shops and carpenter shops of said company, with all tools and fixtures thereof, and all duplicate pieces of machinery.

To have and to hold the aforesaid dredge-boats, derricks, and articles of personal property unto the said Van Norden, his heirs and assigns, forever.

And said Mess'rs Folger and Moody, in their said capacities, hereby bind and obligate said Mississippi and Mexican Gulf Ship Canal
40 Company, and its assigns, to warrant and forever defend the dredge boats, derricks, and articles of personal property herein conveyed, against all legal claims and demands.

This sale is made and accepted for and in consideration of the price and sum of fifty thousand dollars, which has been settled in the manner following, viz:

Whereas the said Mississippi and Mexican Gulf Ship Canal Company is justly and truly indebted unto Warner Van Norden in the full sum of one hundred and sixty-one thousand nine hundred and sixty-two dollars and eighty-six cents, amount of moneys heretofore advanced and furnished by him to the said company, to enable it to do and perform the the work provided for under act No. 30 of the legislature of this State for the year 1871:

Now, therefore, in full settlement and liquidation of said purchase-price, the said Warner Van Norden hereby gives and grants the said Mississippi and Mexican Gulf Ship Canal Company an acquittance and discharge to the extent and amount of fifty thousand dollars on account of said indebtedness, reserving in full force and effect all his
41 claims, rights, and privileges for the balance remaining unpaid of said indebtedness; with which said partial release said Mess'rs Folger and Moody declare the said Mississippi and Mexican Gulf Ship Canal Company to be satisfied, contented, and paid, and in their said capacities hereby grant said Van Norden a full acquittance and discharge in the premises.

No. 3 under the act of May 8th, 1872, among them, and who was to keep the accounts of receipts and expenditures under this act of November 23rd, 1872, and have such accounts been rendered, and what do they show; and did you ever hear said Warner Van Norden say that
35 the dredge boats and machinery of the said company were only to be held by him until he could work out his claim, when he would retransfer them to the company, or make any statement to that effect, and state that it made no difference what price was named for them, or any similar statement or statements? If yes, state when and where he made such statements.

Seventh interrogatory. Was Cyrus Bussey treasurer of the Mississippi and Mexican Gulf Ship Canal Company when the pledge of May 8th, 1872, of the dredge boat No. 3 was made to Morton, Bliss & Co., and did he ever say in your presence that said pledge was worthless and fraudulent or anything to that effect?

Eighth interrogatory. Do you know of any other matter or thing, or can you say anything touching the matters in question in this cause that may tend to the benefit of the defendants in this cause? If yea, state the same as fully and at large as if you had been particularly interrogated in relation thereto.
36 (Signed)

CARLETON HUNT.
WILLIAM H. HUNT,
Solicitors for Def'ts.

Exhibit No. 2 referred to in and made of interrogatory fourth.

STATE OF LOUISIANA,
Parish & City of New Orleans:

Be it known that on this twenty-second day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh, before me, Andrew Hero, jr, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned personally came and appeared Lafayette Folger, the president, and Samuel D. Moody, the secretary of the Mississippi and Mexican Gulf Ship Canal Company, a duly organized corporate body of this State, domiciled in this city and herein acting in their said capacities and for and on behalf
37 of said Mississippi and Mexican Gulf Ship Canal Company, under and by virtue of a resolution of the board of directors thereof, passed at their meeting held on this day; a duly certified copy of which said resolution is hereto annexed for reference. Which said Mess'rs Folger and Moody declared, in their said capacities, and for and on behalf of said Mississippi and Mexican Gulf Ship Canal Company, that for the consideration and on the terms and conditions hereinafter expressed, they do by these presents grant, bargain, sell, convey, transfer, assign and set over, with all legal warranties, unto Warner Van Norden, also of this city, here present, accepting and purchasing for himself, his heirs, and assigns, and acknowledging delivery and possession thereof, all and singular the following described dredge-boats and derricks, together with the machinery, engine tackle, apparel, and appurtenances, and all other necessaries thereto belonging, together with the hereinafter mentioned and described articles of personal property, viz:

Dredge-boat No. 1, with steam-derrick, now lying and being
38 and used and employed in the drainage canal of this city known and designated as the Upper Line Canal.

Dredge-boat No. 2, with steam-derrick, now lying and being and used and employed in the drainage canal of this city, known and designated as the Orleans street draining canal.

Dredge-boat No. 3, with steam-derrick, now lying and being used and employed in the drainage canal of this city, known and designated as the Hagan avenue canal, and near the Poydras draining canal.

Dredge-boat No. 4, with steam-derrick, now lying and being at or near the lake end of the new canal, and used or employed in the construction of the Lake Protection Levee.

Dredge-boat, known as the Ridge-boat, which was purchased from the city of New Orleans, now lying and being or used and employed in the draining canal of this city, known and designated as the Upper Line Canal.

Dredge-boat styled the J. O Noyes, now lying and being, or used and employed in the draining canal of this city, known as the Carrol-
39 ton avenue canal, and near the Poydras street draining canal.

Dredge-boat styled "Clam-shell Dredge," now lying and being, or used and employed in draining canal of this city, known and designated as the Upper Line Canal.

One barge in said Upper Line Canal, attached to and working with the aforesaid derrick and dredge-boat No. 1.

Three flatboats, five skiffs, two mules, two horses, one wagon, two drays.

The steam-tug Olive, of the burthen of eight tons, or thereabout, now lying at the lake end.

Blacksmith shops and carpenter shops of said company, with all tools and fixtures thereof, and all duplicate pieces of machinery.

To have and to hold the aforesaid dredge-boats, derricks, and articles of personal property unto the said Van Norden, his heirs and assigns, forever.

And said Mess'rs Folger and Moody, in their said capacities, hereby bind and obligate said Mississippi and Mexican Gulf Ship Canal
40 Company, and its assigns, to warrant and forever defend the dredge-boats, derricks, and articles of personal property herein conveyed, against all legal claims and demands.

This sale is made and accepted for and in consideration of the price and sum of fifty thousand dollars, which has been settled in the manner following, viz:

Whereas the said Mississippi and Mexican Gulf Ship Canal Company is justly and truly indebted unto Warner Van Norden in the full sum of one hundred and sixty-one thousand nine hundred and sixty-two dollars and eighty-six cents, amount of moneys heretofore advanced and furnished by him to the said company, to enable it to do and perform the the work provided for under act No. 30 of the legislature of this State for the year 1871:

Now, therefore, in full settlement and liquidation of said purchase-price, the said Warner Van Norden hereby gives and grants the said Mississippi and Mexican Gulf Ship Canal Company an acquittance and discharge to the extent and amount of fifty thousand dollars on account of said indebtedness, reserving in full force and effect all his
41 claims, rights, and privileges for the balance remaining unpaid of said indebtedness; with which said partial release said Mess'rs Folger and Moody declare the said Mississippi and Mexican Gulf Ship Canal Company to be satisfied, contented, and paid, and in their said capacities hereby grant said Van Norden a full acquittance and discharge in the premises.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of George Cenas and Paul A. Conrad, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed)

L. FOLGER, *President.*
S. D. MOODY, *Secretary.*
W. VAN NORDEN.
ANDREW HERO, J'R,
Not. Public.

PAUL A. CONRAD.
GEO. CENAS.

A true copy of the original on file and of record in my office.
New Orleans, first of March, 1876.
[SEAL.] (Signed) ANDREW HERO, J'R,
Not. Pub.

42 *Exhibit No. 3, referred to and made part of interrogatory fifth.*

Agreement between the Mississippi and Mexican Gulf Ship Canal Company and W. Van Norden, of 18th May, 1872, offered in evidence by intervenor and third opponent, and filed April 4th, 1874.

Agreement made this eighteenth day of May, 1872, between the Mississippi and Mexican Gulf Ship Canal Company and W. Van Norden, of said city:

1. It is hereby agreed between the canal co. and said W. Van Norden that said W. Van Norden shall retain all the warrants issued by the city of New Orleans to said canal co. for work done by said company before the first day of April, 1872, to be his own, and shall balance the accounts to that date, and surrender to said canal co. all notes given to said W. Van Norden by them, leaving in the hands of said W. Van Norden an excess in amount of warrants taken at their face value of thirty thousand dollars ($30,000) over the amount advanced by him to said canal company.

43 2. That all warrants issued by the city of New Orleans for work done by said company, in accordance with act No. 30 of the legislature of Louisiana of 1871, and of ordinances passed by the council of the city of New Orleans in compliance therewith, for dredging the draining canals prior to May first, eighteen hundred and seventy-three (1873), shall be delivered to said W. Van Norden, who shall credit the company with the same at the rate of eighty-two and one half (82½) cents on the dollar, except as provided in paragraph nine (9) of this agreement.

3. That for work done in April, 1872, and each month thereafter until and including April, 1873, the advance shall be twenty-five thousand dollars, the difference between said advance and the amount of warrants received at 82½ cents on the dollar to be paid by either side as the case may be on receipt of the warrants after the close of the month, except as provided by paragraph nine (9) of this agreement.

44 4. That in addition to the above, during the month of May, 1872, shall be advanced to said canal company by said W. Van Norden, the sum of ten thousand dollars ($10,000), and during each month thereafter the amount of twenty thousand dollars ($20,000) until the excesses of the advances over credits from proceeds of war-

rants at 82½ cents on the dollar shall amount to seventy-five thousand dollars ($75,000).

That for these extra advances the company shall give its drafts signed by the treasurer of the company, as follows:

One payable November 1st, 1872, for $10,000.

Two payable December 1st, 1872, for $10,000 each.

One payable January 1st, 1873, for $20,000.

One payable February 1st, 1873, for $25,000.

A total of $75,000.

These drafts shall be made on said W. Van Norden to the order of E. C. Palmer & Co., excepting one for $10,000 due December 1st, 1872, which shall be to the order of said company.

45 Interest at the rate of eight per cent. per annum shall be paid monthly on the amount in use of these extra advances.

The said canal company binds itself to pay the above-described drafts at maturity, and in the event of the said canal company failing so to do, the said W. Van Norden is hereby authorized to deduct the amount of the same from the monthly receipts from the city of New Orleans, should he desire to do so, or from any funds of the company in his hands.

5. That the advances for each month shall not be made until the warrants are received from the city of New Orleans for the work and during the preceeding month.

6. That should the law or ordinances under which said canal company is now acting be changed, the said W. Van Norden shall have the right to cancel this contract.

7. That said company shall subrogate to said W. Van Norden all its interest in their contract with the city, and all the rights, privi-

46 leges, and franchises derived by the said company from act of the legislature No. 30, session of 1871, and the ordinances of the city passed in accordance therewith.

9. That should the New Orleans consolidated loan, authorized by act 73, session of 1872 of the legislature of Louisiana, not be negotiated by the city of New Orleans or its fiscal agent before the *the* first of August, 1872, at the legal limit, to wit, ninety cents or more on the dollar, then said W. Van Norden shall have the right to exchange the warrants issued monthly by the city of New Orleans for bonds of said new consolidated loan, and to sell said bonds at once at the current market rates, and should they net less than eighty-one and three-quarters (81¾) cents on the dollar he shall have the right to reserve as his own seven and one-half per cent. of the face of said bonds, the remainder of the amount to be credited to the company; and the amount of proceeds of such sales, less the seven and one-half per cent. of the bonds as afore-

47 said, shall be the amount to be credited monthly to the company, instead of as provided by paragraph three of this agreement. And the excess advanced by said W. Van Norden, under the terms of paragraph three of this agreement, shall be at once refunded by said company, calculating from April 1st, 1873.

10. That whenever said W. Van Norden shall request it dredge-boats No. 1 (now working at the line of the old Carrolton Railroad), No. 2 (now working at Orleans street), No. 4 (now working in Orleans street), and the Metarie River dredge-boat purchased from the city of New Orleans, with the derricks accompanying and working with the same, three

(3) in numbers, shall be transferred by said company to him as additional security for the money advanced to him.

Signed in duplicate, New Orleans, La.

(Signed) LAFAYETTE FOLGER,
President M. & M. G. S. Canal Co.

(Signed) W. VAN NORDEN.

48 *Exhibit No. 4, annexed to the sixth interrogatory.*

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this twenty-third day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety seventh, before me, Andrew Hero, j'r, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Warner Van Norden, of this city, party hereto of the one part, and Lafayette Folger, president, and Samuel D. Moody, secretary of the Mississippi and Mexican Gulf Ship-Canal Company, a duly organized corporate body of this State, domiciled in this city, and herein acting in their said several capacities, and for and on behalf of said company, under and by virtue of a resolution of
49 the board of directors thereof, passed at their meeting held on the twenty-second day of the present month, a duly certified copy of which said resolution is hereto annexed for reference, party hereto of the other part, which said parties declared that they had contracted and agreed, and do by these presents mutually contract and agree and bind and obligate themselves, the one party unto the other party, as follows, viz:

Said Van Norden hereby promises and binds, and obligates himself to excavate all the drainage canals, build or construct all the protection levees, and to and perform all the work required of said Mississippi and Mexican Gulf Ship Canal Company, within the present corporate limits of the cities of New Orleans and Carrolton, under the provisions of act No. 30, of the legislature of the State for the year 1871, entitled "An act to provide for the drainage of New Orleans," and to these ends to furnish, use, and employ, at his own cost and expense, the requisite num-
50 ber of men, all dredge-boats and derricks, with their tackle, apparel, and appurtenances, and all machinery, tools, apparatus, and appurtenances, and all machinery, tools, apparatus and other fixtures that may be deemed necessary.

And in consideration of the premises and of the faithful compliance of said Van Norden with all the conditions above imposed upon him, said Folger and Moody, in their said capacities, and for and on behalf of said Mississippi and Mexican Gulf Ship Canal Company, hereby promise for and bind and obligate the said Mississippi and Mexican Gulf Ship Canal Company to pay and allow said Warner Van Norden, his heirs and assigns:

1st. The sum of fifteen thousand dollars, in lawful money of the United States, for and during each and every month that may elapse from and after the first day of November, A. D. 1872, until the full and final completion of all the work provided for in said act No. 30, of the legislature of this State for the year 1871, entitled "An act to provide for the
51 drainage of New Orleans"; and

2nd. A commission of two and a half per centum on the amount

of all moneys that may hereafter enure to or be received by said Mississippi and Mexican Gulf Ship Canal Company, under the provisions of the aforesaid act No. 30 of the legislature of this State, entitled "An act to provide for the drainage of New Orleans."

And it is further understood and agreed to by and between the parties hereto, that said Van Norden shall have and receive said monthly sum of *of* fifteen thousand dollars, and the aforesaid commission of two and a half per cent. at the end of each and every month, out of the revenues and monies that may be had and obtained by said Mississippi and Mexican Gulf Ship Canal Company, under the provisions of the aforesaid act No. 30, of the legislature of this State for the year 1871, entitled "An act to provide for the drainage of New Orleans," that after deducting twenty per cent. of the remainder of said revenues and
52 monies for the payment of other creditors of said Mississippi and Mexican Gulf Ship Canal Company, the residue of said revenues or monies shall be applied to the extinction and settlement of the indebtedness now due and owing by said Mississippi and Mexican Gulf Ship Canal Company, under the provisions of an act passed before the undersigned notary on the twenty-second day of May, eighteen hundred and seventy-two, viz., one hundred and eleven thousand nine hundred and sixty-two dollars and eighty-six cents.

And it is understood and agreed by and between the parties hereto, that in the event of any of the dredge-boats or derricks of said Van Norden being disabled or permanently stopped from said work, a deduction corresponding with the actual running expenses and repairs of such boat shall be made and allowed by said Van Norden to said Mississippi and Mexican Gulf Ship Canal Company, on account of said monthly sum of fifteen thousand dollars, and commission of two and
53 a half per cent; that the said Mississippi and Mexican Gulf Ship Canal Company shall pay and allow interest, at the rate of eight per cent. per annum, on the amount of the indebtedness under the provisions of the aforesaid contract passed before me, notary, on the twenty-second day of May, 1872, until the final payment thereof; that the herein specified payment shall be made on the basis of the actual market value of all certificates, warrants, and other evidences of indebtedness that may be received from the city of New Orleans under the contract with the said city of New Orleans, and that from and after this date the said Van Norden shall not be called upon or liable to make any loans or advances of any kind or nature whatsoever unto the aforesaid Mississippi and Mexican Gulf Ship Canal Company.

This done and passed in my office, at New Orleans aforesaid, in the presence of George Cenas and Paul A. Conrad, witnesses, both of
54 this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed)

L. FOLGER, *President.*
S. D. MOODY, *Sec.*
W. VAN NORDEN.
ANDREW HERO, J'R,
Notary Public.

GEORGE CENAS.
PAUL A. CONRAD.

A true copy of the original on file and of record in my office.
New Orleans, March 1st, 1876.
[SEAL.] (Signed) ANDREW HERO, J'R,
Not. Pub.

Cross interrogatories.—Filed March 21st, 1876.

U. S. circuit court. In equity.

WARNER VAN NORDEN)
vs. } 7443.
MORTON, BLISS & CO.)

Before proceeding to propound cross-interrogatories, counsel for complainant objects to the statements and testimony of any person or persons whomsoever, whose age, name, and residence are not fully set forth in the interrogatories-in-chief.

55 Cross-interrogatory 1. (Complainant objects to any verbal testimony to vary, add to, alter, or contradict the resolution and the act of November 22d, 1872, referred to in the 2d interrogatory-in-chief, and requires the production of the resolution and act themselves as the best and only legal evidence to show the circumstance, and consideration under which they were proved. He also objects to any evidence to show what was done at any meeting of the Mississippi and Mexican Gulf Ship Canal Company, except the minutes of the meeting, such minutes being the best evidence of the facts sought to be proved.) In what capacity were you present at the meeting which passed the resolution referred to in interrogatory No. 2 in chief? Was complainant Van Norden present? Was he a member of the board of directors? Was he present when the meeting opened? Was he not sent for by the board of directors? Did he not attend such meeting at the special instance and request of the board, or some of its members? Which

56 of them? Was he not sent for in reference to his account against the company, which he had sent with a communication to the company, and which the board of directors was then examining, with a view to a settlement? Was or was not the account of Van Norden made up in detail? Where is Van Norden's communication and account at the present time? Do they not form a portion of the archives or records of the company? What the nature or character of the items of Van Norden's account? What was the aggregate amount of debits, as shown by that account? Running from what time to what time? What was the aggregate amount of credits? Bearing what dates? Running from what time to what time? What were the contents of Van Norden's communication hereinabove referred to? Were not the statements and accounts examined into and approved by the board of directors? Who voted against them? State particularly who voted for them. Will not the minutes of the board kept by the secretary shew what was the vote relative to the statements and accounts presented by Van Norden

57 against the company? What will appear from the minutes, on reference to the same? Can you positively swear that any consideration for the passage of the resolution and the act of Nov'r 22d, 1872, existed, other than that set forth in such resolution and act? State with great minuteness and perspicuity what the consideration was; who suggested it; when, how, and in what manner was it proposed; how, when, and in what manner was the company connected with any consideration other than set forth in the resolution and act aforesaid. When, in what manner, and by what language did Warner Van Norden bind himself to any other consideration than that disclosed in the aforesaid act of Nov'r 22d, 1872? What were his precise words? State the same particularly. Who was present and heard him? Was S. D. Moody present all the time? Have you at any time disclosed any

irregularity connected with the meeting of November, 1872? Can you positively swear a meeting was held on the 20th November, 1872? Are you quite certain of it? State every fact or circumstance
58 which induces you to say that any meeting held by the board of directors was irregular or illegal, particularly the meeting referred to in interrogatory-in-chief No. 2? If any irregularity or illegality existed, point it out. Has any one instructed you as to your testimony on this or any other point of your evidence?

Cross-interrogatory 2d. (Counsel for complainant objects to the testimony of the witnesses so far as the same may seek to contradict, alter, vary, enlarge, or modify the act executed before Andrew Hero on the 22d day of November, 1872, on the ground that the writ'en and authentic act aforesaid cannot be questioned collaterally nor contradicted by parol evidence.) Was not the act of pledge of May 8th, 1872, executed without the authority and consent of the board of directors? Was a resolution passed by the board authoriz ng it? When was it passed? At what meeting? What was the contents of that resolution? What other authority existed? State particularly the character of the
59 debt for the payment of which the aforesaid pretended pledge was given. What was its amount? How much has been paid on it? What was the amount actually and truly and lawfully due upon the said account at the time of the passage of the resolution referred to?

(Counsel for complainant specially objects to any parol evidence to establish any other consideration of the act of Nov'r 22d'r 1872, than is therein set forth, and objects to such testimony for the purpose of varying, altering, contradicting, enlarging, or modifying that act, or any other written instrument under which Van Norden holds.)

Who made and entered into the covenant or agreement referred to in third interrogatory-in-chief? Did the company hold itself to any such covenant or agreement? When; where; in what manner; to what ex-ent? By resolution, or motion, or otherwise? How otherwise? Ought not the minutes to show what was done? Do they not? Was Van Norden directly or indirectly a party to such covenant or agreement? When, where, in what manner did he bind himself? By
60 parol or in writing? What did he do? State precisely what he did and all that he did. What did he say? What language was used by him? What words did he employ, showing his assent to any covenant or agreement other than that contained in the act of 22d Nov'r, 1872, particularly the pretended covenant and agreement referred to in interrogatory No. 3 in chief? State with very great minuteness and precision all that was said or done by Van Norden and the company in reference to such pretended covenant or agreement.

Cross-interrogatory 3rd. Where were the meetings referred to in interrogatory-in-chief No. 4 held? Who was present? Were they regular meetings of the board? Were they special meetings, regularly called? Were they not strict-corners or unofficial meetings? State the name of each member of the board present at each of said meetings. Will you positively swear Van Norden was present at any such meetings as are referred to in interrogatory 4? What meeting?
61 Where held? At what hour of the day? What did Van Norden say or do? What was his exact language? Will you positively swear that Van Norden, at the times and places hereinabove referred to positively bound himself to any extent whatever? To what extent? Are you prepared to state that act Nov'r 22d, 1872, was passed in exact accordance with the understanding had at any of

the aforesaid meetings? Are any of the facts referred to by you evidenced by a written instrument? If yea, state each one specifically, so that the court may be able to determine what is proved by them and what is shown by written evidence.

Cross-interrogatory 4. (Complainant objects to proof of the intention of the company in connection with dredge boat #3, and the act of May 8th, 1872, in any other way or manner than by the minutes, resolutions, or proceedings of the company, the only method of making its
62 intention known.) From what source did you gather the animus or intention of the company referred to in interrogatory 5th? Was it from any resolution, motion, or proceeding of the board of directors passed when lawfully assembled? Was it ascertained from any member or members of the board? How many and whom? State particularly what was said or done. Answer very minutely, giving the precise language used at any time, and stating by whom used. Can you positively swear that complainant Van Norden was in any manner connected with such pretended animus or intention of the company or any of the members of the board of directors? How? When? Where? How often? What did Van Norden do or say? State precisely what was said and done. Has complainant, Van Norden, ever legally bound himself towards the company or to Morton, Bliss & Co., otherwise than is set forth in the authentic acts of November 22d & 23rd, 1872?

Cross-interrogatory 5th. Does not the authentic act of Novem-
63 ber 23rd, 1872, refer to all of the creditors of the company; were Morton, Bliss and Co. included? Was there any special arrangement relative to keeping the accounts? When, where, by whom, and in what manner was such special arrangement made? Was not complainant to keep his own account, and the company hers; what account do you swear has not been rendered; where are the accounts? (Complainant objects to proof of their contents by parol and require the production of the accounts themselves.) In whose handwriting; in whose name; what are the dates of such accounts?

(Complainant specially objects to all parol proof calculated to vary, alter, enlarge, contradict, or modify authentic act of Nov. 22d, 1872.)

When did you hear the statements of Van Norden referred to in interrogatory 6 in chief; how often; where; who was present; what was said by Van Norden; what were his exact words; was the statement verbally made or in writing? Will you posi-
64 tively state under your oath that Van Norden ever did make or assent to any statement or arrangement referred to in interrogatory 6?

Cross-interrogatory 6. The statements of Cyrus Bussey referred to in interrogatory 7th objected to and the witnesses required to confine his testimony to facts within his own knowledge.

(Signed) LACY & BUTLER,
Solicitors for Complainant.

Interrogatory by plaintiff.—Filed March 30th, 1876.

U. S. circuit court. In equity.

WARNER VAN NORDEN } *vs.* MORTON, BLISS & Co. } No. 7443.

Interrogatories to be administered to Warner Van Norden, S. D. Moody, and Ed. C. Palmer, witnesses to be produced, sworn, and examined in the above entitled and numbered cause on the part of complainant Warner Van Norden.

Interrogatory 1st. Are you or are you not aware of the trans-

65 fer to complainant, Van Norden, of certain dredge-boats, flat boats, a steam-tug, barge, and other property? If yea, when and by whom, and by whom were the same transferred; by delivery merely or by a written transfer; was it private or authentic? If authentic, before what notary was the act executed?

Interrogatory 2d. Where were the dredge-boats, and other vessels and property referred to in interrogatory No. 1, situated at the time of such transfer? What was the price or consideration agreed to be given? Was it a just and fair consideration, or otherwise? Was the consideration actually and in good faith paid, or otherwise? Were or were not the dredge-boats, and other property transferred, actually delivered to complainant Van Norden? When? Where? By whom, and in what manner? Has or has not complainant been in the open, actual, and peaceable possession of the dredge-boats and other property transferred to him from the time of the transfer to the present time? What has been doing with the same?

66 Interrogatory 3rd. Has or has not any portion of the dredge-boats transferred to Van Norden been seized by Morton, Bliss & Co. under a writ of fieri facias, issued upon a judgment by them, obtained against the Mississippi and Mexican Gulf Ship-Canal Co.? If yea, what boat has been seized, and what was the amount due Morton, Bliss & Co. upon the judgment aforesaid at the date of the seizure? What was the value of the dredge-boat thus seized at the date of the seizure? What amount of damage has been sustained by Van Norden, if any, from such seizure?

Interrogatory 4th. Are you or are you not aware of a pretended act of transfer or pledge from the Mississippi and Mexican Gulf Ship-Canal Company to Morton, Bliss & Co., under date May 8th, 1872? When, where, and in what manner did you become acquainted with its details?

67 Up to what time was complainant Van Norden in ignorance of the details of that act, and when, where, and under what circumstances was knowledge of that act and its contents brought home to the said Van Norden?

Interrogatory 5th. Was or was not the act transferring the dredge-boats, &c., to Van Norden under date Nov'r 22d, 1872, before A. Hero, notary public, made by said Van Norden, subordinate to the aforesaid act of pledge or transfer to Morton, Bliss & Co., dated May 8th, 1872? If you answer in the affirmative, state when, where, and in what particular way or manner.

Interrogatory 6. When, where, and in what manner did complainant Van Norden enter into any arrangement for the seizure of the dredge-boats and property referred to in the aforesaid act of Nov'r 22d, 1872, at the suit or in the interests of Morton, Bliss & Co., or any other person? Can you positively swear such an arrangement or agreement

68 existed? Can you or not positively swear that no such arrangement or agreement was ever made or existed? Was or was not the transfer to Van Norden made upon any promise or understanding on his part that he, Van Norden, would redeem the transferred property, or any portion of it, from any lien, claim, or right on the part of respondents, Morton, Bliss & Co.? What claim or lien, so far as your knowledge extends, had Morton, Bliss & Co. upon such property? Has or has not Van Norden always believed that Morton, Bliss & Co. had no such right, lien, or privilege? Tell all you know in relation to the matter.

Interrogatory 7th. Are you aware of any fact or circumstance showing, or tending to show, that the pretended act of pledge or transfer from

the company to Morton, Bliss & Co., under date May 8th, 1872, is without force and effect, particularly as against complainant Van Norden?

If yea, you will please state such fact or circumstance with the
69 same minuteness as if you had been specially interrogated in reference thereto.

Interrogatory 8th. Are you aware of any fact or circumstance in relation to what you have not already answered, showing or tending to show that the act of transfer to Van Norden under date Nov'r 22d, 1872, was made in good faith for a valuable consideration, and in due course of business; or any fact or circumstance not heretofore referred to showing or tending to show that complainant Van Norden is entitled to a decree in this case? If yea, you will state such fact or circumstance with the same particularity and certainty as if you had been specially interrogated in reference to such fact or circumstance.

(Signed) LACEY & BUTLER,
Solicitors.

Cross-interrogatories.—Filed April 10th, 1876.

U. S. c't c't. In equity.

WARNER VAN NORDEN }
vs. } No. 7443.
MORTON, BLISS & CO. }

70 Cross-interrogatories to be administered to Warner Van Norden, S. D. Moody, and Ed. C. Palmer, witnesses to be produced, sworn, and examined in the above entitled and numbered cause.

Cross-interrogatory 1. Are you the complainant in this cause, or, if not, what business or other connection do you sustain towards him, and what interest have you in the result of this suit?

Cross-interrogatory 2d. If you say in answer to the second interrogatory that you knew where the dredge-boats of the Mississippi and Mexican Gulf Ship-Canal Company were, state whether you knew where the dredge boat No. 3, seized in this case, was.

Cross-interrogatory 3rd. Don't you know that the drainage of the city of New Orleans was never in any manner interrupted by the seizure of the said dredge boat No. 3; that no damage has resulted from such seizure, and that the complainant was permitted to bond the same immediately?

71 Cross-interrogatory 4. If you say that the complainant was ignorant of the details of the act of pledge of the said dredge-boat No. 3 to Morton, Bliss & Co. up to any given time, give your reasons for such a statement.

Cross-interrogatory 5. Were you a director of the Mississippi and Mexican Gulf Ship-Canal Company, or an officer thereof, when the said act of pledge was executed; and who were the officers at that time, and who the directors, and who the treasurer of the company authorized to make loans for the said company?

Cross-interrogatory 6. How is your knowledge of the claims of Morton, Bliss & Co. against the said dredge-boat No. 3 derived?

Cross-interrogatory 7. In your foregoing answers, have you spoken of matters entirely within your own knowledge, or from hearsay? And if you have spoken at all from hearsay, review your said answers and state in what respect you have so spoken.

72 Lastly. Do you know of any other matter or thing, or have

you heard or can you say anything touching the matters in question in this cause that may tend to the benefit and advantage of the defendant in this cause besides what you have been interrogated unto? If yea, declare the same fully and at large, as if you had been particularly interrogated thereto. And state in particular who has the books and papers of the Mississippi and Mexican Gulf Ship-Canal Company, and whether Warner Van Norden, the complainant, has rendered any account or accounts to the said company as long as Lafayette Folger was president and Cyrus Bussey treasurer, and how long, exactly, was that after the date of the acts referred to in your answer to the eighth interrogatory?

[Signed) CARLETON HUNT & WILLIAM H. HUNT,
Solicitors.

73 *Testimony for defendant.—Filed April 15th*, 1876.

UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana. In equity.

WARNER VAN NORDEN
vs.
MORTON, BLISS AND CO. } No. 7443.

Depositions of witnesses produced, sworn, and examined on behalf of the defendants upon the interrogatories and cross-interrogatories propounded to them by and before F. A. Woolfley, special examiner duly appointed by said court, pursuant to the 67th rule of practice for the courts of equity of the United States, by an order made and entered on the 1st day of March, 1876, to take the depositions of the witnesses in the above-entitled cause.

NEW ORLEANS, *March 30th*, 1876.

JOHN L. GUBERNATOR, a witness produced, sworn, and examined on behalf of the defendants, for answer to the interrogatories and cross-interrogatories deposes and says:

To the 1st interrogatory he saith: My name is John L. Guber-
74 nator. My age is fifty-four. My residence is No. 354 Rampart street, city of New Orleans. I know Warner Van Norden personally, and Morton, Bliss & Co. I heard of. They both claim to be creditors of the Mississippi and Mexican Gulf Ship-Canal Company. There was a dredge-boat called No. 3, of which I was told Morton, Bliss and Company held a pledge. I know nothing about it myself. I was a director of the company about two years or so until about June, 1873.

To the second interrogatory he saith: I was present at a meeting about the time named when the resolution passed to transfer to Van Norden the dredge-boats, &c., mentioned. Van Norden claimed to be, and I believe was, a creditor of the company. I believe the notarial act is in accordance with the resolution adopted authorizing the transfer of the boats, etc. The dredge-boat No. 3 was included in the transfer.

Van Norden agreed to pay the creditors who were most pressing
75 for payment, such as laborers and parties who furnished materials to the company.

To the third interrogatory he saith: I know of no pledge of the dredge-boat No. 3 to Morton, Bliss & Co., by the Mississippi and Mexican Gulf

Ship-Canal Company for any debt. I heard of such a pledge at the time it was made by the treasurer to secure a debt which Morton, Bliss & Co. claimed that the company owed them. I do not know whether that debt has been discharged or not. I do not know whether it was due on the passage of the resolution or not. I have no recollection that Van Norden agreed to pay the debt.

To the fourth interrogatory he saith: L. Folger was president and Cyrus Bussey, M'r Benner, E. P. Champlin, and John L. Gubernator were directors. I do not know whether they were all present at the meeting referred to in the second interrogatory. I was present when
76 the resolution was passed authorizing the transfer to Van Norden of the dredge-boat No. 3. The date I do not know. I was present at other meetings, but I do not know what was the purpose of them. I have no recollection of any other meeting when the resolution was discussed except in the first instance, when it was passed. I do not know what meeting that was. Van Norden made no agreement with regard to the dredge-boat No. 3, in connection with Morton, Bliss & Co. I presume that the act of November 22d was passed in accordance with the resolution authorizing it. I made no record of any subsequent meeting nor do I know that anybody else did.

To the fifth interrogatory he saith: I am acquainted with no agreement between Van Norden and the Mississippi and Mexican Gulf Ship-Canal Company of May 8th, 1872. I do not know by what au-
77 thority said agreement was entered into. I don't know why the dredge-boat No. 3 was not included.

To the sixth interrogatory he saith: I don't recollect having seen the act of 23rd November, 1872, until I saw it among these papers. I do not know anything about who the creditors were that are referred to in the act of November 23rd. I don't know anything about them. I do not know whether Morton, Bliss & Co. were the pledgees of the dredge-boat No. 3 under the act of May 8th, 1872. I do not know who was to keep the accounts of the expenditures and receipts under this act of November 23rd, 1872. I do not know that any accounts have been rendered, nor do I know if the records show. I do not know whether I heard Van Norden say that the dredge-boats and machinery were only to be held by him until he should work out his claim, but such was my understanding. I do not know when or where he made such a
78 settlement, unless it was at the meeting of the board when he was present.

To the seventh interrogatory he saith: Cyrus Bussey was treasurer of the Mississippi and Mexican Gulf Ship-Canal Company on the 8th of May, 1872, but I know nothing about the pledge being made to Morton, Bliss & Co. Bussey never said to me or in my presence that said pledge was fraudulent, or anything to that effect.

To the eighth interrogatory he saith: I have nothing further to say.

Cross-interrogatories:

To the 1st cross-interrogatory he saith: I was present as a director at the meeting which passed the resolution referred to in the second interrogatory-in-chief, but I do not remember the date. Van Norden was present at one meeting, but I do not know whether it was at that meeting or not. He was not a director. I do not know whether he was present when the meeting opened or not. I do not know
79 whether he was sent for after the meeting opened. I do not know whether he attended the meeting by the special request of the board. I do not know whether he was sent for with reference to

his account against the company, or whether he was sent for at all or not. I do not know of Van Norden sending any account to be considered by the board. He may have done so. I do not know whether the account of Van Norden was made out in detail or not, or anything about it. I do not know where Van Norden's communication and accounts are at the present time. I do not know whether they form part of the archives and records of the company or not. I do not know the character of the items of any accounts of Van Norden. I do not know the aggregate amount of the debts, as shown by that account. I do not know how the accounts run. I do not know the aggregate amounts of the credits. I do not know the contents of Van Norden's communi-
80 cation or anything about it, whether it was sent or not. I do not know of any statement of the accounts of Van Norden being examined into by the board proper during my presence. I do not know who voted against them, nor who voted for them. The minutes ought to show the vote and everything about the account of Van Norden, if one was presented. I do not know what will appear from the minutes with reference to them. There was a consideration for the passage of the resolution and act of November, 1872, other than is stated in the act itself. It was this: Van Norden agreed to pay certain amounts due laborers and parties having furnished materials, which I think does not appear in the acts of November 22d and 23rd, 1872. That is as particular as I can state it. I do not know who suggested it, or when, how, or in what manner the company was connected with the consideration, other than as stated in the act, and what I have already stated above. I do not know by what language Van Norden bound himself to
81 any other consideration than that disclosed in the act of November 22d, than as I have stated above. I do not recollect who was present at the time. I do not know whether M'r Moody was present all the time. I have not disclosed any irregularity connected with the meeting of November, 1872, nor do I recollect anything about it. I cannot swear that the meeting was held on the 20th November, but there were meetings held about that time. I am quite certain of that. I do not know whether any of the meetings of the board of directors was irregular. I believe the meeting referred to in the interrogatory second in chief to have been regular. No one has instructed me as to what testimony I would give on this point.

To the 2d cross-interrogatory he saith: I know nothing about the pledge of May 8th, 1872, only I heard there was such a pledge. I do not know whether there was a resolution of the board authorizing it; I do not know when it was passed, if any was passed; I do not
82 know the meeting; I do not know the contents of the resolution, nor whether it was passed or not; I know of no authority; I do not know the character of the debt for which the pledge was made, nor that such a pledge was made, only that I heard that it was; I do not know the amount of the debt; I do not know how much has been paid on it; I do not know what was due on the account at the time of the passage of the resolution; according to Exhibit No 1 in the papers in this case it appears to have been made by Cyrus Bussey, the treasurer of the company, to Morton, Bliss & Co.; I do not know when, where, or in what manner, except by the document itself; I do not know whether by resolution, motion, or otherwise of the board. The minutes of the board of directors ought to show what was done; I do not know that the' do show it; I do not know whether Van Norden was a party to such an agreement, directly or indirectly, except as by Exhibit 1. I know nothing whatever about it. I do not know what language or by

what act Van Norden signified his acceptance of the act of May 8th, 1872, other than that contained in the act of November 22d, 1872.

To the 3rd cross-interrogatory he saith: The meetings referred to in the fourth interrogatory-in-chief were held on Common street, between Baronne and Carondelet street, at which I don't know who was present; I do not know whether they were regular monthly meetings or special meetings, but I believe they were regularly called; I know nothing about street-corner meetings; I cannot state the names of those present at each of these meetings; Van Norden was present at one of the meetings referred in the fourth interrogatory-in-chief, about November 20th, held on Common street, as above stated; I don't know the hour of the day; I don't know what Nan Norden said or did; I don't know his exact language. Mr. Van Norden agreed to pay the claims of the pressing creditors of the company, consisting of those of laborers and parties who had furnished material, but I don't know when or where he did it; I don't know to what extent. I believe the act of November 22d, 1872, was passed substantially in accordance with the resolution authorizing the transfer of the dredge-boats to Van Norden. I do not know whether the facts referred to by me are evidenced by a written instrument or not.

To the 4th cross interrogatory he saith: I do not know anything about the animus or intention of the company referred to in the fifth interrogatory-in-chief. Mr. Van Norden agreed to pay the laborers and furnishers of materials, but he never bound himself, to my knowledge, to Morton, Bliss & Co., nor otherwise in any way except as contained in the acts of November 22d and 23rd, nor do I know that these acts are in accordance with the resolution, but I believe them to be so substantially.

To the 5th cross interrogatory he saith: I do not know that the act of November 23rd refers to all the creditors of the company or not; I do not know who were all the creditors of the company; I believe Morton, Bliss & Co. were creditors of the company; I know of no special arrangements for keeping the accounts where or in what manner; I do not know whether Van Norden was to keep his own accounts; I do not know how the accounts were to be kept; I do not swear that any account has not been rendered; I do not know where the accounts are, if there are any; I do not know the names or the dates of these accounts, nor if there are any. As to when I heard the statements of Van Norden described in the sixth interrogatory-in-chief, I have stated them fully in answer to said interrogatory. I do not know how often, or when or where or who was present, unless it was at the meeting of the board when he was present. I do not know his exact words, or whether they were in writing or not. As to the statements or arrangements referred to in the sixth interrogatory-in-chief, it is my recollection that he did assent.

(Signed) J. L. GUBERNATOR.

Subscribed and sworn before me March 30th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

United States circuit court, district of Louisiana.

WARNER VAN NORDEN } No. 7443.
vs.
MORTON, BLISS & CO. }

Personally appeared Edward P. Champlin, who, being duly sworn to testify the truth in answer to the interrogatories and cross-interrogatories propounded to him in the above-entitled cause, deposes and says that he is thirty-three years of age, and resides in the S't Charles Hotel in this city. That he has read the said several interrogatories and cross-interrogatories, as also the several answers made by John L. Gubernator thereto, and, answering the same, adopts the answers of said John L. Gubernator as his answers, and has nothing to add thereto.

(Signed) EDWARD P. CHAMPLIN.

Subscribed and sworn before me, March 30th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

87 United States circuit court, district of Louisiana.

WARNER VAN NORDEN } No. 7443.
vs.
MORTON, BLISS & CO. }

Personally appeared Milton Benner, who, being duly sworn to testify the truth in answer to the interrogatories and cross-interrogatories propounded to him in the above-entitled cause, deposes and says that he is thirty-six years of age, and resides at No. 58 Baronne street, in this city. That he has read the said several interrogatories, as also the several answers made by John L. Gubernator thereto, and, answering the same, adopts the answers of said John L. Gubernator as his answers, and has nothing to add thereto.

(Signed) M. BENNER.

Subscribed and sworn before me, April 3rd, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

88 United States circuit court, 5th circuit, district of Louisiana. In equity.

WARNER VAN NORDEN } No. 7443.
vs.
MORTON, BLISS & CO. }

The answers of Cyrus Bussey.

NEW ORLEANS, *April 4th*, 1876.

CYRUS BUSSEY, a witness produced, sworn, and examined on behalf of the defendants, for answer to the interrogatories and cross-interrogatories deposes and says:

To the 1st interrogatory he saith: My name is Cyrus Bussey, my age is forty-two years, my residence New Orleans. I know the party complainant and defendants in the title to these interrogatories. I was treasurer of the Mississippi and Mexican Gulf Ship Canal Company in

1872 and 1873. I know the dredge-boat No. 3, and derrick attached thereto, was pledged to Morton, Bliss & Co. to secure them for monies borrowed for the use of the company.

89 To the second interrogatory he saith: I was present at a called meeting of the directors of the Mississippi and Mexican Gulf Ship Canal Company about the 20th November, 1872, at which Lafayette Folger, John L. Gubernator, M. Benner, E P. Champlin, and John Lynch were present. Van Norden appeared before the board with a set of resolutions prepared, authorizing the company to transfer to him the machinery, dredge-boats, derricks, and other property, for the purpose, as he stated, of enabling him to work out what the company owed him. I and M'r Folger, the president of the company, had no notice that the board contemplated making such a transfer, and objected to the transfer on the ground that it would be unjust to the other creditors of the company. Van Norden stated that the transfer was a mere matter of form, and that he would retransfer the property back to the company as soon as he worked out the amount due him. The resolution fixed the price of the machinery at $50,000. I objected to the price, as it was not

90 one-half the value of the machinery. Van Norden stated that it mattered not what price was fixed for the machinery as the sale was a matter of form and the company were to be placed back in possession at the same price. I further objected to the transfer of the dredge-boat No. 3, as that boat was already pledged to Morton, Bliss & Co., in good faith, and Van Norden agreed to accept the transfer subject to the debt of Morton, Bliss & Co., as he desired the use of the dredge in the prosecution of the work. I further insisted that Van Norden should set apart a certain portion of the earnings, which portion was fixed at 20%, which should be paid over to the officers of the company, to be used in liquidating the debts due to other parties, which he consented to do. I further opposed the transfer on the ground that no statement of Van Norden's account had been submitted to the officers of the company for verification, and did not know that the account, as presented, was correct. When the vote was taken I and Lynch voted against the resolution, and Gubernator, Benner, and

91 Champlin voted for it. Folger, the president of the company, was opposed to the resolution, and would have voted against it if he could, and so expressed himself.

To the 3rd interrogatory he saith: I know of a pledge of the dredge boat No. 3 made to Morton, Bliss & Co. by the Mississippi and Mexican Gulf Ship-Canal Co. on May 8th, 1872. The pledge was made by myself and treasurer of the company, and to secure Morton, Bliss and Company's debt, for cash borrowed for the use of the company. Van Norden took the transfer of the dredge boat No. 3, subject to the pledge to Morton, Bliss & Co. That debt has not been paid. The debt was due by the company at the passage of the resolution. The debt of Morton, Bliss & Co. was assumed by Van Norden.

To the 4th interrogatory he saith: The directors of the Missis-

92 sippi and Mexican Gulf Ship-Canal Company were Lafayette Folger, John L. Gubernator, M. Benner, John Lynch, E. P. Champlin and myself. They were all present at the meeting referrred to in the second interrogatory in chief. I was present at an informal meeting of some of the directors of the company, at the office of M. Benner, at which Van Norden was present. I still objected to the transfer of the machinery to Van Norden, because I believed it was a fraud upon the creditors of the company. At that meeting Van Norden positively agreed to receive the transfer of the machinery, subject to the claim of

Morton, Bliss & Co., and further agreed to pay to the company the difference between the actual cost of working the dredge-boats and the sum of $15,000 per month, which sum was to be used in liquidation of other debts of the company. I made a memorandum of that agreement at the time. The act of November 22d, 1872, before A. Hero, notary public, purporting to transfer the dredge-boats and other property to Van Norden was passed in pursuance of a resolution of date
93 about November 20th, and the subsequent meeting extending the agreement with Van Norden. Mr. Benner attested the agreement referred to in this (4th) interrogatory.

To the 5th interrogatory he saith: I know of a certain agreement between the Mississippi and Mexican Gulf Ship Canal Company and Van Norden, about May 18th, 1872, for the transfer to said Van Norden of the dredge boats Nos. 1, 2 and 4 of the company, as security for money to be advanced by him. The agreement was entered into by M'r Folger, president of the company, who had authority from the board of directors. The dredge-boat No. 3 was not pledged to Van Norden, because it was pledged to Morton, Bliss & Co., which fact Van Norden knew.

To the 6th interrogatory he saith: I know the notarial act of November 22d, 1872, purporting among other things to pay Van Norden $15,000 a month out of the revenues of the Mississippi and Mexican Gulf
94 Ship-canal Company, after deducting 20 % of the remainder of said revenue. I opposed the passage of this act on the ground that $15,000 per month was far too much, and it was for this reason that I made a memorandum of the agreement with Van Norden to pay back to the company the difference between the actual expense of working the boats and the $15,000 per month provided for in the contract. The 20 % referred to was understood to be used in payment of debts due by the company to other persons than Van Norden. Van Norden agreed to make monthly reports of receipts and expenses to the company, which he failed to do as treasurer of the company. I repeatedly asked him for such statements, but was unable to get any satisfaction. I did hear Van Norden say, and it was positively understood, that the transfer of the machinery to him was not a sale in fact, but as security to authorize him to work out his claim against the company. I would not have consented to the transfer of the machinery
95 to Van Norden for double the amount, if I had not understood that the pretended sale was not a sale.

To the 7th interrogatory he saith: I was treasurer of the Mississippi and Mexican Gulf Ship Canal Company when the pledge of May 8th, 1872, was made to Morton, Bliss & Co. of the dredge-boat No. 3. I never did say that said pledge was worthless or fraudulent, or anything to that effect, but I did say that it would be a fraud to again transfer the dredge-boat No. 3 to Van Norden until the debt due Morton, Bliss & Co. was satisfied. Van Norden did not apply to me as treasurer, or to M'r Folger, president of the company, for a settlement of his account, or to ask us to make the transfer of the machinery to secure his debt, and the first intimation either of us had was when this meeting was convened. Had M'r Folger and myself not understood that Van Norden would assume this debt to Morton, Bliss & Co., and pay to the company 20% of the earnings and the difference between the
96 cost of working the dredges and the sum of $15,000 per month, which sum was to be used to pay other creditors of the company, we would have retired from the board and broken the quorum. Had we been apprised of his desire to secure such a transfer we would not

have consented to meet the board, as we desired to act in good faith to all the creditors. Van Norden agreed to give a written letter to re-transfer the machinery to the company, and within a very short time after this transfer was made Van Norden purchased the interests Benner, Gubernator, and Champlin, and they ceased to be directors in the company.

Cross-interrogatories:

To the 1st cross-interrogatory he saith: I was present, as treasurer of the company, at the meeting which passed the resolution; Van Norden was present. He was not a member of the board of directors.
97 He was present at the time the meeting opened; he was in waiting. He did not attend at the special instance of the board, but the board attended at his instance. Benner, Gubernator, and Champlin called the meeting; Van Norden was not present with reference to his accounts against the company. He had not sent in his account but brought it with him. The board of directors was not examining his account, as they did not have it until he arrived. I, as treasurer, had no opportunity of looking at his account. It was made up of many items, which would have required considerable time, much longer than could be given to it at one meeting, to verify it. I do not know anything of the communication or the account. I do not know whether they formed a part of the archives of the company. I cannot state the items of Van Norden's account. I do not know the exact amount of the debt as shown by the account, nor the time. I do not remember the contents of Van Norden's communication referred to, except that it was
98 a request to transfer to him the machinery. When I desired to know why there was so much haste, and urged an adjournment, it was answered that somebody was about to get judgment against the company, and would attach the property. The statement and account were not examined into, as there was no time. The time of the meeting was consumed in discussion, and in an endeavor on the part of myself and the president of the company to have the matter postponed. When the vote was taken I and John Lynch voted against the transfer; Benner, Gubernator, and Champlin voted for it. I do not know what the minutes of the board will show. I can swear that Van Norden purchased the interest of Benner in the company at a price far above its value, and I believe that this purchase was made in consideration of the transfer of the property by this act of November 22d, 1872. I cannot say whether there was any consideration for the passage of the act. The company was not connected with any other consideration than that stated in my answers to the direct interrogatories.
99 When I objected to the transfer of the property to Van Norden, and particularly to the transfer of the dredge-boat No. 3 and the derrick, because it was already pledged to Morton, Bliss & Co., Van Norden said, "I will accept the transfer of the dredge-boat No. 3, subject to the claim of Morton, Bliss & Co." He made this statement in presence of the board; I believe S. D. Moody was present all the time. The only irregularity connected with the meeting of November, 1872, was the fact that the meeting was called without it being stated for what purpose, and that the majority of the board were disposed to force the transfer of the machinery of the company to one of the creditors of the company to the prejudice of other creditors, which I characterized at the time as a fraud. It was freely talked of and well understood that the transfer was not in good faith, but was intended to place the property in the hands of Van Norden to prevent some creditor from attaching. I believe the meeting was held on or about the 20th

100 November, 1872. No one has instructed me as to the testimony I should give in this case.

To the 2d cross-interrogatory he saith: The act of pledge of May 8th, 1872, to Morton, Bliss & Co., was executed by the authority and consent of the board of directors at a meeting held March 2d, 1872, authorizing the president or treasurer to mortgage or pledge the machinery. The resolution was passed at a meeting of the board held March 2d, 1872, and reads as follows:

"Resolved, that the president or treasurer be authorized to mortgage or pledge the machinery of the company to secure any loans which may be necessary for said company, and any such pledge or mortgage shall bind the company."

The debt to Morton, Bliss & Co. was for cash borrowed from them for the use of the company, and to secure them this pledge was made. The amount due Morton, Bliss & Co. exceeded $25,000. I cannot state how much has been paid on it. The company owed Morton, Bliss &
101 Co. $25,000 at the time of the pledge of the dredge-boat No. 3 to Morton, Bliss & Co. I, as treasurer of the company entered into the covenant referred to in the third interrogatory-in-chief in suit No. 7443 in this court. The company bound itself by the resolution referred to, there authorizing me, as treasurer of the company, to make the pledge at a meeting of the board held March 2d, 1872; the minutes will show the resolution. Van Norden became a party to this claim of Morton, Bliss & Co. in November, when he sought to have the machinery of the company transferred to himself. When I and the president of the company objected to the transfer of Dredge-boat No. 3, on the ground that it was already pledged to Morton, Bliss & Co. to secure them for monies borrowed from them by the company, Van Norden stated that he wanted the dredge-boat for the prosecution of the work, and that he would accept the transfer of that boat subject to Morton, Bliss & Co.'s debt.

To the 3rd cross-interrogatory he saith: The meeting referred
102 to in the fourth interrogatory-in-chief was held about November 20th, 1872. Folger, Benner, Gubernator, Champlin, Lynch, and myself composed the board. It was at a called meeting of the board, called on very short notice. I will swear Van Norden was present at the called meeting about November 20th, 1872, when the resolution to transfer the machinery was passed. He was also present at an informal meeting of the board held at M'r Benner's office, some time during the forepart of that day. Van Norden said, "I accept the transfer of the dredge-boat No. 3, and derrick subject to Morton, Bliss & Co.'s claim. He further said, "I will keep a monthly account of the running expenses of the company, and will pay to the company the difference between the actual expenses and $15,000 per month specified in the agreement made between him and the company." He further said "And I will pay to the company 20% additional from the earnings of the company to be used by the company in liquidating its indebtedness to
103 other creditors." The reason assigned by Van Norden for not having all these agreements together with the agreement to retransfer the property to the company was that it would in the eye of the law vitiate the contract. I consider that Van Norden positively bound himself to the pledge made to Morton, Bliss & Co. and to the payment of the additional sums, and that it was as much an agreement and contract between him and the company as the written contract which he sought to have executed. He had kept verbal agreements before, was a bank president, and I had a right to believe that he would

keep this contract. I am prepared to state that the act of November 22d, 1872, referred to, was passed in exact accordance with the verbal understanding here stated. As a director of the company I should not have consented to have remained there had I not believed that Van Norden would carry out this verbal agreement.

To the 4th cross-interrogatory he saith: The source from which
104 I gathered the intention of the company, referred to in the fifth interrogatory-in-chief, was the well known fact by the board that the dredge boat No. 3 was pledged to Morton, Bliss & Co., and hence could not be transferred to Van Norden. Van Norden so understood it; the fact was ascertained from the president and from myself. The president had given a prior pledge of the dredge boat No. 3 to Morton, Bliss & Co., which pledge I renewed as treasurer. I repeatedly stated to the board and to Van Norden that the dredge boat No. 3 was pledged to Morton, Bliss & Co.

To the 5th cross-interrogatory he saith: The act of November 23rd, 1872, refers to all the creditors of the company, Morton, Bliss & Co. included, the only difference being that Morton, Bliss & Co. held this pledge of the dredge boat No. 3, which Van Norden agreed to assume by accepting the transfer of the machinery subject to Morton, Bliss & Co.'s claim. Van Norden agreed to keep a monthly account and present the same to the company showing the receipts and expenses,
105 which, to the best of my knowledge, he failed to do. So long as I was treasurer of the company he never submitted the monthly statements as agreed. I do not know that he ever made any accounts, and if made where they are. I heard the statements of Van Norden that were made at the meeting of the board referred to about the 22d November. These statements were repeated several times at that meeting and also the next day at an informal meeting held at the office of M'r Benner, at which Lafayette Folger and S. D. Moody were present. Van Norden stated that he would accept the transfer of the dredge boat No. 3 subject to the claim of Morton, Bliss & Co., and that he would pay to the company the difference between the actual cost of working the dredge boats and the sum of $15,000 per month, and that he would further pay the sum of 20% out of the earnings of the company, to the company, to be used in liquidating the debts of other persons. I made a memorandum in writing of the agreement to pay to the company the difference between $15,000 per month and the
106 actual expenses. Van Norden did state as above and agreed as sworn to by me.

(Signed) CYRUS BUSSEY.

Subscribed and sworn before me April 4th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

United States circuit court, fifth circuit, district of Louisiana. In equity.

WARNER VAN NORDEN
vs.
MORTON, BLISS & Co. } No. 7443.

Personally appeared JOHN LYNCH, who, being duly sworn to testify the truth in answer to the interrogatories and cross-interrogatories propounded to him in the above entitled cause, deposes and says that he is fifty-one years of age; and resides in New Orleans; that he has read the said several interrogatories and cross-interrogatories, as also the

several answers made by John L. Gubernator thereto, and answering the same adopts the answers of the said John L. Gubernator as his answers with the exceptions, explanations, and modifications, to wit:

107 To the 1st interrogatory he saith: The answer made by John L. Gubernator to this 1st interrogatory I adopt as my own, and herewith add that I resigned as a director of the Mississippi and Mexican Gulf Ship Canal Company in the latter part of November, 1872.

To the 2d interrogatory he saith: I agree with this answer to said interrogatory, but I add that I do not know whether I was present at the meeting therein referred to in the second interrogatory.

To the 3rd interrogatory he saith: I adopt this answer, adding that I did not hear that such a pledge was made to Morton, Bliss & Co. as is stated therein.

108 To the 4th interrogatory he saith: I cannot adopt this answer unless I modify it so as to state that I do not know whether I was present at the passage of the resolution referred to, whether it was passed or not, or whether the resolution of November 20th and the act of November 22d agree; a comparison will show that.

To the 5th interrogatory he saith: I adopt the answer to this interrogatory as my own.

To the 6th interrogatory he saith: I adopt this answer except the clause "such was my understanding."

To the 7th interrogatory he saith: I adopt this answer as my own, as I also do the answer to the 8th interrogatory.

To the 1st cross-interrogatory he saith: I adopt this answer as my own, also stating that I do not know whether I was present at the meeting or not, or whether there was any consideration other than

109 disclosed in the acts of November, 1872. I have no recollection about the meeting referred to in the 2d interrogatory-in-chief, or whether the meeting was regular or not, as I do not know that was not present.

To the 2d cross interrogatory he saith: I adopt this answer, but state that I do not know that such a pledge was made.

To the 3rd cross-interrogatory he saith: I adopt this answer, except that I do not know that the act of November 22d was passed in accordance with a resolution. I do not know that Van Norden agreed to pay the claims of the pressing creditors of the company or anybody else.

To the 4th cross-interrogatory he saith: I adopt this answer, except that I do not know that Van Norden did pay the claims of anybody, nor whether the act of November 23rd was passed in accordance with any resolution.

To the 5th interrogatory he saith: I adopt this answer as my own except that I have no recollection that Van Norden agreed or

110 assented to any arrangement referred to in the sixth interrogatory in chief.

(Signed) JOHN LYNCH.

Subscribed and sworn before me April 12th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

United States circuit court, district of Louisiana.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

Personally appeared LAFAYETTE FOLGER, who, being duly sworn to

testify the truth in answer to the interrogatories and cross interrogatories propounded to him in the above-entitled cause, deposes and says that he is sixty years of age, and resides in New Orleans, L'a; that he has read the said several interrogatories and cross-interrogatories, as also the several answers of Cyrus Bussey thereto, and, answering the same, adopts the answers of the said Cyrus Bussey as his answers, with the exceptions, modifications, and explanations as follows, to wit:

1st. That he was president of the Mississippi and Mexican Gulf
111 Ship Canal Company.

2d. As to the answer to the 7th interrogatory, he saith that, according to his understanding, Van Norden did not assume the debt due to Morton, Bliss & Co. In other respects he adopts said answer.

3rd. As to the answer to the 2d cross-interrogatory he saith that Van Norden accepted the transfer of dredge-boat No. 3, subject to the pledge of Morton, Bliss & Co. In other respects he adopts said answer.

And further he saith not.

(Signed) LAFAYETTE FOLGER.

Subscribed and sworn before me April 15th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

I, Francis A. Woolfley, special examiner, duly appointed by the circuit court of the United States for the district of Louisiana to take the testimony of John L. Gubernator, Edward P. Champlin, Milton Benner, Cyrus Bussey, John Lynch, and Lafayette Folger, witnesses on the part of the defendants, do hereby certify that on the days named in
112 the depositions hereto annexed I was attended at the office of the clerk of said circuit court, in the city of New Orleans, by the witnesses aforesaid; that the said witnesses were duly sworn, and the interrogatories and cross-interrogatories duly propounded to them and examined, and their answers to the same were reduced to writing and read to them, and by them subscribed in my presence.

New Orleans, April 15th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Testimony for complainant.—Filed April 25th, 1876.

UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana. In equity.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

Depositions of witnesses produced, sworn, and examined on behalf of the complainant upon the interrogatories and cross-interrogatories propounded to them by and before F. A. Woolfley, special examiner, duly appointed by said court, pursuant to the 67th rule of practice for the courts of equity of the United States, by an order made
113 and entered on the 1st day of March, 1876, to take the depositions of the witnesses in the above-entitled cause.

NEW ORLEANS, *April 17th*, 1876.

WARNER VAN NORDEN, the complainant therein, being produced, sworn, and examined, for answer to the interrogatories and cross-interrogatories, deposes and says:

To the 1st interrogatory he saith: I am familiar with the transfer referred to in this interrogatory of the dredge-boats and other property mentioned therein to the complainant, Van Norden. The transfer was made by the president and secretary of the Mississippi and Mexican Gulf Ship Canal Company under the authority of its board of directors to W. Van Norden, the transferee, by authentic act passed before A. Hero, j'r, notary public, on the 22d of November, 1872. The complainant, Van Norden, took actual possession of the property transferred the same day or the day after the act was executed both by written transfer and actual delivery.

114 To the 2d interrogatory he saith: The said property in this interrogatory was in the parish of Orleans, the date of the transfer. The consideration agreed upon was a credit of $50,000 by the said Van Norden on the account of the Mississippi and Mexican Gulf Ship Canal Company. It was a fair equitable consideration at the time, and in good faith paid or credited. The dredge-boats and other property were actually delivered to the complainant, Van Norden, on the date of the transfer or the day succeeding. in the parish of Orleans, by the secretary of the company, and said Van Norden took actual possession of the dredges by going on board of each and making proclamation of the fact of his ownership to the engineers and crew. The complainant, Van Norden, has been in open, actual, and peaceable possession of all the dredges and other property since November 22d, 1872, and employing and paying the men engaged in the work to the present time, excepting one or two seizures by the sheriff, which were immediately released, which seizures had nothing at all to do with the defend-

115 ants and with these suits. The dredges have been steadily employed carrying out the contract with the city under the act No. 30 of the legislature of 1871.

To the 3rd interrogatory he saith: The dredge-boat No. 3 was seized as stated by Morton, Bliss & Co. under a judgment obtained by them against the Mississippi and Mexican Gulf Ship Canal Company. At the date of the seizure I think the amount claimed by Morton, Bliss & Co. on the judgment obtained against the company was about $13,000, but I am not sure. The dredges, derricks, etc., seized by Morton, Bliss & Co. were valued at about $25,000. The damages sustained by the complainants are equal to council fees, loss of time, and annoyance in defending this suit.

To the 4th interrogatory he saith: I heard that Morton, Bliss & Co. claimed such a pledge as is referred to in this interrogatory, but I have never seen it. The first clear knowledge of said pledge that I

116 remember of was imparted to me in the summer of 1873, in a conversation with M'r Wallace, the president of the Guarantee and Indemnity Company of New York; I think, however, that the existence of the pretended pledge was communicated to me before that, not in a manner to impress me so as to cause me to have a clear remembrance thereof or to communicate the contents or details of that act.

To the 5th interrogatory he saith: The act of November 22d, 1872, had nothing whatever to do with the pledge of Morton, Bliss & Co. of May 8th, 1872. The complainant entered into the act of November 22d, 1872, for his own protection and good, and knew little or nothing of the relations of Morton, Bliss & Co. to the canal company. Con-

plainant had an imperfect or general knowledge that Morton, Bliss & Co. and the Guarantee and Indemnity Company had Louisiana State bonds to secure them for loans made to the canal company. The act under date of November 22d, 1872, was never made subordi-
117 nate to the act of May 8th, 1872. I would have known the fact had such been the case.

To the 6th interrogatory he saith: I never knew of any such agreement; the complainant Van Norden did not bind himself by any express promise, nor was there even a tacit understanding that he would make good any claim or pretended claim of Morton, Bliss & Co. to any lien or claim on any part of the property transferred November 22d, 1872. I understood that Morton, Bliss & Co. claimed to have a pledge of the dredge-boat No. 3, and derrick, but was informed, and I think by an officer of the company, that the pledge was not considered of any value, and I was so informed by the notary public before whom Morton, Bliss & Co. passed the act.

To the 7th interrogatory he saith: I have reason to believe that Morton, Bliss & Co. knew the pledge was valueless, and so averred,
118 as I was informed, when they brought suit against the Mississippi and Mexican Gulf Ship-Canal Company in the United States circuit court, district of Louisiana, being suit No. .

To the 8th interrogatory he saith: The various acts passed between the company and Van Norden were made in good faith by Van Norden and the company. The fact was well known that the company could not carry on the business of dredging without making these arrangements with Van Norden, so as to obtain cash to pay for supplies and labor. Van Norden could not afford to consent to furnish the cash without having this property transferred to him. The transfer was made in accordance with a previous agreement entered in between Van Norden and the company. I never acknowledged, nor do I now acknowledge, that Morton, Bliss & Co. have any claim upon the dredge-boat No. 3 and its derrick, or upon the complainant for any claim due them
119 by the Mississippi and Mexican Gulf Ship Canal Company. I never agreed to pay any such indebtedness, and no attempt to involve the complainant in the matter was ever made until long subsequent to the act of sale of November 22d, 1872.

Cross-interrogatories:

To the 1st cross-interrogatory he saith: I am the complainant in this case.

To the 2d cross-interrogatory he saith: The dredge-boat No. 3 was in the Hagan Avenue canal, a few feet from Common street, at the time of the transfer.

To the 3rd cross-interrogatory he saith: The work was not interrupted by the seizure of the dredge-boat No. 3, but it demoralized the men and tended to reduce the efficiency and amount of work usually done.

To the 4th cross-interrogatory he saith: I have stated that the complainant was ignorant up to a certain time, which time I have given in my answer to the fourth interrogatory-in-chief.

120 To the 5th cross-interrogatory he saith: I was not an officer of the company at the time of the act alluded to in this cross-interrogatory. M'r Folger was president, and Cyrus Bussey was treasurer, and Dr. Rice secretary. I do not know who the directors were.

To the 6th cross-interrogatory he saith: My knowledge of the claims of Morton, Bliss & Co. to the said dredge-boat No. 3 was derived from hearsay.

To the 7th cross-interrogatory he saith: In my foregoing answers I

have spoken of things entirely of my own knowledge; my evidence is entirely of my own knowledge, and not from hearsay.

Lastly. I know of no other fact or circumstance which would be advantageous to the defendants in this case. The secretary of the company has the books and papers of the company. I did render an account to the company while Folger was president and Bussey
121 treasurer. It was approved by M'r Bussey in writing. One was rendered on November 22d, 1872. I don't recollect how long after the date of the act referred to in my answer that the other statements where rendered.

(Signed) W. VAN NORDEN.

Subscribed and sworn before me April 17th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

United States circuit court, 5th circuit, district of Louisiana. In equity

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } 7443.

The answer of S. D. Moody.

NEW ORLEANS, *April 17th*, 1876.

S. D. MOODY, a witness produced, sworn, and examined on behalf of the complainant, for answer to the interrogatories and cross-interrogatories, deposes and says:

To the 1st interrogatory he saith: My age is 36 years. I reside in New Orleans. I am familiar with the transfer referred to in this interrogatory of the dredge-boats and other property mentioned
122 therein to the complainant, Van Norden. The transfer was made by the president and secretary of the Mississippi and Mexican Gulf Ship Canal Company, under the authority of its board of directors, to W. Van Norden, the transferee, by authentic act passed before A. Hero, j'r, notary public, on the 22d of November, 1872. The complainant, Van Norden, took actual possession of the property transferred the same day or the day after the act was executed, both by written transfer and actual delivery.

To the 2d interrogatory he saith: The said property in this interrogatory was in the parish of Orleans, the date of the transfer. The consideration agreed upon was a credit to $50,000 by the said Van Norden, on the account of the Mississippi and Mexican Gulf Ship Canal Company. It was a fair and equitable consideration at the time, and in good faith paid or credited. The dredge-boats and other property were actu-
123 ally delivered to the complainant, Van Norden, on the date of the transfer, or the day succeeding, in the parish of Orleans, by the secretary of the company; and the said Van Norden took actual possession of the dredges by going on board of each and making proclamation of the fact of his ownership to the engineers and crew. The complainant, Van Norden, has been in open, actual, and peaceable possession of all the dredges and other property since November 22d, 1872, and employing and paying the men engaged in the work, to the present time, excepting one or two seizures by the sheriff, which were immediately released, which seizures had nothing at all to do with the defend-

ants. The dredges have been steadily employed carrying out the contract with the city under the act No. 30 of the legislature of 1871.

To the 3rd interrogatory he saith: The dredge-boat No. 3 was seized as stated by Morton, Bliss & Co., under a judgment obtained by them against the Mississippi and Mexican Gulf Ship Canal Company.
124 At the date of the seizure I think the amount claimed by Morton, Bliss & Co. on the judgment obtained against the company was about $13,000, but I am not sure. The dredges, derricks, etc., seized by Morton, Bliss & Co. were valued at about $25,000. The damages sustained by the complainant are equal to council fees, loss of time, and annoyance in defending this suit.

To the 4th interrogatory he saith: I am aware there was such a pledge to Morton, Bliss & Co. as is here referred to in this interrogatory by the Mississippi and Mexican Gulf Ship Canal Company. I became acquainted with it at several meetings of the board of directors, when it was explained by M'r Bussey, treasurer, and M'r Folger, president, these stating that such a pledge existed, but that it was without force in law, and of no consequence. I do not know up to what time Van Norden was ignorant of the details of that act.

To the 5th interrogatory he saith: The act of November 22d,
125 1872, had nothing whatever to do with the pledge of Morton, Bliss & Co. of May 8th, 1872, and was not subordinate to the pledge of Morton, Bliss & Co.

To the 6th interrogatory he saith: I never knew of any such pledge as is referred to in this interrogatory. None ever came before the board of directors of the company. I can swear most positively that no such agreement or arrangement ever existed with the company and Van Norden. No such question as the redemption by Van Norden of any claim or lien which Morton, Bliss & Co. might have was ever brought before the board of directors of the company. I understood that Morton, Bliss & Co. claimed to have the pledge of the dredge-boat No. 3, and derrick, but was informed by Gen. Bussey and M'r Folger that the pledge was not considered of any value. M'r Van Norden always believed that Morton, Bliss & Co. had no claim upon the property.

To the 7th interrogatory he saith: I have reason to believe
126 that Morton, Bliss & Co. knew the pledge was valueless and so averred, as I was informed, when they brought suit against the Mississippi and Mexican Gulf Ship Canal Company, in the United States circuit court, district of Louisiana, being suit No. .

To the 8th interrogatory he saith: The various acts passed between the company and Van Norden were made in good faith by Van Norden and the company. The fact was well known that the company could not carry on the business of dredging without making these arrangements with Van Norden, so as to obtain cash to pay for supplies and labor. Van Norden could afford to consent to furnish the cash without having this property transferred to him. The transfer was made in accordance with a previous agreement entered in between Van Norden and the company. I never acknowledged, nor do I now acknowledge, that Morton, Bliss & Co. have any claim upon the dredge-boat No. 3 and its derrick, or upon the complainant, for any claim due them
127 by the Mississippi and Mexican Gulf Ship Canal Company. I never agreed to pay any such indebtedness, and no attempt to involve the complainant in the matter was ever made until long subsequent to the act of sale of November 22d, 1872.

Cross-interrogatories:

To the 1st cross-interrogatory he saith: I am not the complainant in this case. I am the superintendent of Van Norden. I have no interest in the result of this suit.

To the 2d cross-interrogatory he saith: The dredge-boat No. 3, referred to in this cross-interrogatory, was in the Hagan avenue canal, a few feet from Common street, at the date of the transfer.

To the 3rd cross-interrogatory he saith: The dredge work was interrupted in this way, by demoralizing the men, and therefore less work was done.

To the 4th cross-interrogatory he saith: I do not make any such statement that Van Norden was ignorant. I have no reasons to give.

128 To the 5th cross-interrogatory he saith: I was in no way connected with the company at the time of the act of pledge of May 8th, 1872, to Morton, Bliss & Co.

To the 6th cross interrogatory he saith: I have already explained how I obtained my information as to the claim of Morton, Bliss & Co., in my answer to the fourth interrogatory-in-chief.

To the 7th cross-interrogatory he saith: In my foregoing answers I have spoken entirely of matters within my own knowledge, and not from hearsay, except as I so qualified it.

Lastly. I have nothing further to say that would be of benefit to the defendants in this case. I, as secretary, have custody and control of all the works and papers of the Mississippi and Mexican Gulf Ship Canal Company. Van Norden has rendered accounts to the company, but I do not remember whether M'r Folger was president or M'r

129 Bussey was treasurer at the time or not. I do not remember when the accounts were rendered.

(Signed) S. D. MOODY.

Subscribed and sworn before me April 17th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

NEW ORLEANS, LOUISIANA, *April 24th*, 1876.

EDWARD C. PALMER, a witness produced, sworn, and examined on behalf of complainant, in answer to the interrogatories and cross-interrogatories, deposes and says:

To the 1st interrogatory he saith: I am aware of the transfer. The transfer was made by notarial act. I do not recollect the date. I do not remember the notary. It was made in good faith for good hard money. The dredge-boats, flat-boats, etc., were delivered by written transfer and delivered. The act was authentic and before a notary. I am not aware what notary.

To the second interrogatory he saith: The boats, etc., above

130 referred to, at the time of the transfer were situated in various positions upon the work which was at that time in progress. The act states the price that was given. I have forgotten it. I cannot say whether the property was worth more than the amount paid for it or not. The consideration was actually paid in good faith in cash. The dredge-boats and other property were actually delivered to complainant Van Norden. I do not remember the date of delivery. Delivery was made in the different localities in which the property was situated. I am not quite positive by whom delivered to him, but to the best of my recollection it was by the president of the company. The delivery was made by actual possession as well as by notarial act. Complainant has

been in open, actual, and peaceable possession of the dredge-boats and other property transferred to him from the time of the transfer to the present time; except when vexed by sundry lawsuits and the attempts of different parties to obtain possession, which has always been
131 contested, work has been in progress ever since.

To the 3rd interrogatory he saith: I believe some portion of the dredge-boats transferred to Van Norden have been seized by Morton, Bliss and Company. I am not aware what boat has been seized nor what the amount due Morton, Bliss and Co. was. I cannot give a correct estimate of the value of the dredge-boats seized by Morton, Bliss & Co., nor of the amount of damage sustained by Van Norden from such seizure.

To the 4th interrogatory he saith: I am not aware of any act of transfer made by the Mississippi and Mexican Gulf Ship Canal Company.

To the fifth interrogatory he saith: Same answer as to interrogatory 4th. I have not and never had any knowledge of any agreement by Van Norden with Morton, Bliss and Company in reference to the above property, nor have I any knowledge of any claim that Morton, Bliss and Company have had upon such property, and I know of my own
132 knowledge that complainant Van Norden never believed Morton, Bliss & Co. had any such lien upon said property.

To the 7th interrogatory he saith: Same answer as to interrogatory 4th.

To the 8th interrogatory he saith: I know of my own knowledge that the act of transfer to Van Norden was made in good faith for a valuable consideration, and in due course of business.

Cross-interrogatories:

To the 1st cross-interrogatory he saith: I am not complainant in this case. I have no interest in the result of this suit.

To the 2d cross-interrogatory he saith: I don't know where dredge-boat No. 3 was.

To the 3rd cross-interrogatory he saith: I cannot answer this cross-interrogatory.

To the 4th cross-interrogatory he saith: I know that Van Norden believed himself to be in legal and peaceable possession of all the dredge-boats transferred to him.

133 To the 5th cross-interrogatory he saith: I was not a director of the Mississippi and Mexican Gulf Canal Company, or an officer thereof, when said act of pledge was executed, nor do I know who were the officers at that time.

To the 6th cross-interrogatory he saith: I never knew that Morton, Bliss and Company had any claim against Dredge-boat No. 3, until they made a seizure of it. In my foregoing answers I have spoken of matters entirely within my own knowledge, and not at all from hearsay; my answers, therefore, need no review.

Lastly, I know of nothing, nor can I say anything touching the matters in question in this cause that may tend to the benefit and advantage of the defendant in this cause. I cannot say who has the books and papers of the Mississippi and Mexican Gulf Canal Company. I know that Van Norden has rendered accounts to the said company, but how long (exactly) that was after the date of the acts referred to in my answer to the 8th interrogatory I cannot say.

(Signed) EDWARD C. PALMER.

134 Subscribed and sworn before me April 24th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

I, Francis A. Woolfley, special examiner, duly appointed by the circuit court of the United States for the district of Louisiana to take the testimony of Warner Van Norden, S. D. Moody, and Edward C. Palmer, witnesses on the part of the complainant, do hereby certify that on the days named in the depositions hereto annexed I was attended at the office of the clerk of said circuit court, in the city of New Orleans, by the witnesses aforesaid; that the said witnesses were duly sworn, and the interrogatories and cross-interrogatories duly propounded to them and examined, and their answers to the same were reduced to writing and read to them, and by them subscribed in my presence.

New Orleans, April 25th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

135 *Publication of testimony.—Entered and filed May 11th, 1876.*

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

On motion of Carleton Hunt and William H. Hunt, solicitors for Morton, Bliss & Co., and on suggesting that the time allowed for taking depositions of witnesses in the cases above named has elapsed, and that the same has been returned, it is now ordered that publication of the same do pass.

Motion and order, case fixed.—Extract from the minutes.—April term, 1876.

NEW ORLEANS, *Friday, May 19th, 1876.*

Court met at 11 o'clock a. m.
Present, Hon. J. P. Bradley, asso. just. s'p. c't.
" " W. B. Woods, circuit judge.
" " E. C. Billings, district "

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

On motion of Carleton Hunt, solicitor for defendants, ordered,
136 that the above case be set for trial on Wednesday, 24th May, 1876, at 11 a. m., and that complainant be notified.

Order, continuance of case.—Extract from minutes of May 24th, 1876.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

By consent of counsel the above cause is continued to the 2d June, 1876, at 11 a. m.

Hearing and continuance.—Extract from minutes of June 2d, 1876.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

This cause was called together, Lacey & Butler for complainant,

Carleton Hunt for defendants, and after hearing the pleadings and the evidence, the cause is continued till to-morrow, at 2 p. m.

Note of evidence.—Filed June 2d, 1876.

W. VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

137 The complainant offered agreement 1 (transcribed on page 42 of this transcript); document marked 2 (transcribed on page 140); document marked 3, (transcribed on page 142); document marked 4, (transcribed on page 145); document marked 5, (transcribed on page 148); document marked 6 (transcribed on page 151).

It is agreed that either party may have leave to read the statute laws and codes of Louisiana, such reading to have same force and effect as if the same had been formally offered in evidence.

It is admitted that Morton, Bliss & Co. have obtained a writ of fi. fa. against the canal company, under which property was seized by the marshal and a keeper placed thereon, and that the marshal would have proceeded under the writ had he not been enjoined by this suit.

It is admitted that $1,500 would be a moderate compensation for the services of M'r Lacey in this case.

Complainant offered the testimony of W. Van Norden (transcribed on page 113), S. D. Moody (page 121), and E. C. Palmer (page 129), filed April 25th, 1876.

138 Defendants offered agreement, 1 bis (page 42); act 2 of 22d November 1872 (page 36); act 3 of November 23d, 1873 (page 48), all before Hero.

It is agreed that in case of an appeal no document shall be copied more than once.

It is admitted that the acts offered are correct copies.

Defendants offer the judgment in No. 7032 of the records circuit court, this district (transcribed on page 155 of this transcript), which the court admits, that on a certain day such judgment was rendered.

Defendants claim it was agreed that no damages should be recovered in the premises.

Defendants offer the testimony of C. Bussey (page 88), Lafayette Folger (page 110), J. L. Gubernaton (page 76), E. P. Champlin (page 86), I. Lynch, (page 106), Benner (page 87).

Complainant objects to the introduction of the evidence on the ground—

1st. Verbal testimony is inadmissable for the purpose of varying, adding to, allowing, modifying, or contradicting the act of November 22d, 1872, or to add or vary the written pledge relied on by defendants in their answer.

139 2d. Verbal testimony is inadmissable for the purpose of showing what was done at any meeting of the Mississippi and Mexican Gulf Ship Canal Company, and the minutes of such meetings being the best evidence thereof.

3rd. The testimony of Bussey & Folger objected to because they have not answered the cross-interrogatories propounded to them separately, clearly, and distinctly, nor in the way or manner required by law, the answering of which cross-interrogatories fully and distinctly, and in the manner required by law, being essentially necessary to make the complainant and the court to ascertain and determine the extent of the credibility of said witnesses.

All the testimony offered by def'd'ts objected to because it forms no legal nor equitable grounds for seizing the property and effects designated and referred to in complainant's bill of complaint.

Defendants offer pledge marked 7 (page 36 this transcript) and resolution board directors of the Mississippi and Mexican Gulf Ship Canal Company of 2d March, 1872, (transcribed on page 156 of this transcript).

140 Defendants offer minutes of the company from May 21st, 1872, and the entries headed Continuation of Minutes, to show the irregularities and fraud attaching to the so-called contracts of Van Norden (page 156).

Defendants offer the protest of Slayback and Lynch of 3d August, 1872, in the minutes of the company on that day (page).

Complainant objects to the protest; court admits it, to show a protest was made.

Defendants offer the communication from Van Norden to the company, page 40 of the minutes (on page).

Also, resolution, page 44 of same book (on page).

Contract, page 15 of the minutes (on page).

Letter from Van Norden on page 13 minutes (on page).

Defendants object to any testimony as to damages.

Plaintiff admits it was the understanding that no damages should be received except counsel fees.

Document marked "2," referred to in note of evidence.

141 MISSISSIPPI AND MEXICAN GULF SHIP COMPANY,
New Orleans, L'a, , 187 .

I hereby certify that the following resolution was passed by the board of directors of the above company at a meeting held on May 21st, '72.

N. T. RICE, *Sec.*

Resolved, That the president is hereby authorized to negotiate a loan of at least $, in order to provide for the weekly and monthly expenses of excavating canals around the city; and as security for the payment of said loan, the president is moreover authorized to assign and pledge all the rights granted to this co. by act No. 30 of the legislature of this State of 1871, entitled "An act to provide for the drainage of New Orleans," as well as money warrants, certificates, or other revenues, to be derived under said act No. 30.

[SEAL.]

I hereby certify the above to be a true copy of an instrument, in writing, annexed to and made part of an act of agreement between Warner Van Norden and the Mississippi and Mexican Gulf Ship-Canal Company executed before me on May 22d, 1872.

142 In faith whereof I hereto set my hand and official seal this 5th May, 1876.

[SEAL.] (Signed) ANDREW HERO, JR.,
Not. Pub.

(Act referred to above certificate is transcribed on page 36 of this transcript.)

Document marked "3", referred to in note of evidence.

MISSISSIPPI AND MEXICAN GULF SHIP CANAL CO.,
No. 26 CAMP STREET,
New Orleans, April 17th, 1876.

I hereby certify that the following is a true copy of an extract from minutes of a meeting of the directors of the Miss. & Mexican Gulf Ship-Canal Co. held the 22d day of November, 1872:

The following resolution was offered, and, after some discussion, the yeas and nays were called for by M'r Lynch, with this result: Yeas, Benner, Champlin, and Gubernaton; nays, Lynch and Bussey, and was therefore adopted:

Whe*n*'as the first instalment, to wit, ten thousand dollars, of the loan of seventy-five thousand dollars made by W. Van Norden to this co. is now passed due and unpaid;

And whereas by contract with and between said W. Van Nor-
143 den and this co. this co. has bound itself to transfer and deliver to the said W. Van Norden all and sundry the dredge boats, derricks, &c., now belonging to this co.:

Now, therefore, be it

Resolved, That, in good faith and pursuant to contract previously passed, and now in force, between the said W. Van Norden and this co., the president and secretary are hereby authorized and directed to sell and transfer to W. Van Norden, by notarial act, for the price of fifty thousand dollars, to be deducted on account of the co's indebteness to said W. Van Norden, all the dredge-boats and derricks belonging to this co., together with all their tackle, apparel, and appurtenances, as follows, viz:

Dredge-boat No. 1, with steam derrick, both of which are now working together on the upper-line canal.

Dredge-boat No. 2, with steam derrick, both of which are now working together on the Orleans street canal.

Dredge-boat No. 3, with steam derrick, both of which are now
144 working together on a canal near Poydras canal.

Dredge-boat No. 4, with steam derrick, both of which are now working together on the lake-protection levee.

Dredge-boat known as the Ridge boat, purchased from the city of New Orleans, and now working on the upper-line canal.

Dredge-boat J. O. Noyes, now working on Carrolton avenue canal, near Poydras canal.

Dredge-boat known as the Clam Shell, now working on the upper-line canal.

One barge, now working with derrick No. 1 on the upper-line canal.

Three flat-boats, five skiffs; all blacksmith-shops and carpenters' tools owned by the co.

Two mules, two horses, one wagon, two drays, steam-tug Olive, all duplicate pieces of machinery, and the general outfit and appurtenances of all the *all the* boats.

[SEAL.] (Signed) S. D. MOODY,
Sec. M. & M. G. S. C. Co.

145 Document marked "4," referred to in note of evidence.

NEW ORLEANS, *Nov'r 22d*, 1872.

At a meeting of the Board of Directors of the Mississippi and Mexican Gulf Ship Canal Co. held this day, (were present Mess'rs Folger, Bussey, Lynch, Benner, Champlin, and Gubernator,) the following contract was offered, and the yeas and nays called for by M'r Gubernator, with this result: Yeas, Bussey, Champlin, Gubernator, and Benner; nays, Lynch, and was therefore adopted.

Contract entered into at New Orleans, La., this 22d day of Nov'r, A. D. 1872, by and between W. Van Norden on the one part, and the Miss. and Mexican Gulf Ship Canal Co. on the other part.

1st. It is hereby stipulated and agreed that said W. Van Norden shall continue and prosecute to completion the work of excavating drainage canals for the city of New Orleans, in pursuance of the provisions of act No. 30 of the session of the general assembly of the State of L'a of 1871, entitled "An act to provide for the drainage of New Orleans;"
146 and that he shall employ in said work all his dredge-boats and derricks and tackle, apparel and appurtenances thereto belonging, that may be made available for such work. For and in consideration of which he shall be entitled to, and shall receive the sum of fifteen thousand dollars for each and every month during the continuance o the said work, provided that the in event of any of the dredge-boats being permanently stopped from work, the said Van Norden shall make a deduction corresponding with the actual*ly* monthly running expenses and repairs of such boats.

2d. It is further agreed that the fifteen thousand dollars designated above as payable for each and every month during the continuance of the said work shall be by said W. Van Norden deducted and retained out of the monthly receipts from the city of New Orleans, and that the balance of such receipts from said city less five and one-half per cent. commission, shall be credited on the amount due to the said W. Van Norden, until the whole of said indebtedness shall be paid, which said indebtedness, upon the 1st day of Nov. 1872, is fixed and understood to
147 have been the sum of one hundred and sixty-one thousand nine hundred and sixty-two dollars and eighty-six cents ($161,962 $\frac{86}{100}$.) Said W. Van Norden shall entitled to collect and receive as above, interest on the said indebtedness or any part thereof remaining unpaid at the rate of 8% per annum until paid.

3rd. All the above payments are to be made upon the basis of the actual market value of the certificates, warrants, or other evidences of debt received as above from the city of New Orleans.

4th. Said W. Van Norden shall not be bound to advance any moneys upon any account whatsoever or pay to said Canal Co. any moneys, except as provided in this contract. Provided that 20% of the net earnings of the work shall be paid to the Co. to be used to pay other creditors of the Co.

5th. This contract to take effect from the first day of November, 1872, and the president and secretary are hereby authorized to sign the proper paper, &c. before a notary to complete this contract.

OFFICE OF THE MISS. & MEXICAN GULF SHIP CANAL CO.,
New Orleans, June 1st, 1876.

148 I hereby certify the foregoing to be a true and exact copy from

the minutes of the meeting of the board of directors of the said Co., held November 22d, 1872, at the office of the co., No. 183 Common st.

In testimony whereof, I hereby affix my official signature and the seal of the said Co. at the date and place herein above set forth.

[SEAL] (Signed) S. D. MOODY,
Sec'y.

Documnet marked "5," referred to in note of evidence.

NEW ORLEANS, *November 22d*, 1872.

I hereby certify that at a meeting of the Board of Directors of the Mississippi and Mexican Gulf Ship Canal Company, held at the office of the Company this day, the following resolution was duly adopted:

Whereas the first instalment, to wit, ten thousand dollars, of the loan of seventy-five dollars made by W. Van Norden to this company, is now pass due, and is unpaid; and whereas by contract with and
149 between W. Van Norden and this company, this company has bound itself to transfer and deliver to said W. Van Norden all and sundry the dredge-boats, derricks, &c., now belonging to this company: Now, therefore, be it

Resolved, That in good faith and pursuant to contract previously passed and now in force, between the said W. Van Norden and this company, the president and secretary of this company are hereby authorized and directed to sell and transfer to W. Van Norden, by notarial act, for the price of fifty thousand dollars, to be deducted on account of the company's indebtedness to said W. Van Norden, all the dredge-boats and derricks belonging to this company, together with all their tackle, apparel, and appurtenance, as follows, viz:

Dredge-boat No. 1, with steam derrick, both of which are now working together on the upper-line canal.

Dredge-boat No. 2, with steam derrick, both of which are now working together on the Orleans-street Canal.

Dredge-boat No. 3, with steam derrick, both of which are now working together on a canal near Poydras Canal (in Hagan-avenue Canal).

150 Dredge-boat No. 4, with steam derrick, both of which are now working together on the lake-protection levee.

Dredge-boat known as the "Ridge boat," purchased from the city of New Orleans, and now working on the upper-line canal.

Dredge-boat J. O. Noyes, now working in Carrolton-avenue Canal, near Poydras Canal.

Dredge-boat known as the "Clam-shell Dredge," now working on the upper-line canal.

One barge, working with derrick No. 1, on the upper-line canal.

Three flat-boats.

Five skiffs.

All blacksmiths' shops and carpenter's shops owned by the company.

Two mules.

Two horses.

One wagon.

Two drays.

Steam-tug Olive.

All duplicate pieces machinery,

And the general outfit and appurtenances of all the boats.

[SEAL.] (Signed) S. D. MOODY,
Secretary Miss. & Mex. Gulf Ship-Canal Co.

151 I, the undersigned, a notary public in and for the parish of Orleans, L'a, do certify that the foregoing is a true copy of an instrument in writing annexed to and made part of an act of sale of dredge-boats, &c., by the Mississippi and Mexican Gulf Ship-Canal Co. to Warner Van Norden, executed before me on November 22d, 1872.

In faith whereof I have hereto set my hand and seal, at New Orleans, L'a, this 5th May, 1876.

[SEAL.] (Signed) ANDREW HERO, J'R,
Not. Pub.

(Act referred to in above certificate, and made part of document marked "5," is transcribed on page 36 of this transcript.)

Document marked "6," referred to in note of evidence.

NEW ORLEANS, *November 22d*, 1872.

I hereby certify that at a meeting of the board of directors of the Mississippi and Mexican Gulf Ship-Canal Co., held at their office this day, the following contract was agreed to and adopted:

Contract entered into at New Orleans, L'a, this twenty-second day of November, A. D. 1872, by and between W. Van Norden on
152 the one part, and the Mississippi and Mexican Gulf Ship-Canal Company.

1st. It is hereby stipulated and agreed that the said W. Van Norden shall continue and prosecute to completion the work of excavating drainage canals for the city of New Orleans, in pursuance of the provisions of act No. 30 of the session of the general assembly of the State of Louisiana of 1871, entitled "An act to provide for the drainage of New Orleans," and that he shall employ in said work all his dredge-boats and derrick and tackle, apparel, and appurtenances thereto, that may be made available for such work. For and in consideration of which prosecution of said work he shall be entitled to and shall receive the sum of fifteen thousand dollars for each and every month during the continuance of said work: Provided, That in the event of any of the dredge-boats being permanently stopped from work, the W. Van Norden shall make a deduction corresponding with the actual running expenses and repairs of such boat.

2d. It is further agreed that the fifteen thousand dollars designated above as payable for each and every month during the continu-
153 ance of the said work shall be by said W. Van Norden deducted and retained out of the monthly receipts from the city of New Orleans, and that the balance of such receipts from said city, less two and one-half per cent. commission, shall be credited on the amount due said W. Van Norden until the whole of said indebtedness shall be paid, which said indebtedness, upon the first day of November, A. D. 1872, is fixed and understood to have been the sum of one hundred and sixty-one thousand nine hundred and sixty-two dollars and eighty-six cents ($161,962.86). Said W. Van Norden shall be entitled to collect and receive interest on the said indebtedness, or any part thereof remaining unpaid, at the rate of eight per cent. per annum until paid.

3rd. All the above payments are to made on the basis of the actual market values of the certificates, warrants, or other evidences of indebtedness received as above from the city of New Orleans.

4th. Said W. Van Norden shall not be bound to advance any moneys upon any account whatsoever, or pay to said canal co. any moneys,

154 except as provided in this contract: Provided, that 20 per cent. of the net earnings of the work shall be paid to the company to be used to pay other creditors of the company.

5. This contract to take effect from the first day of November, 1872, and the president and secretary are hereby authorized to sign the proper papers, &c., before a notary to complete this contract.

(Signed) S. D. MOODY,
Secretary Miss. & Mex. Gulf S. C. Co.

I, Andrew Hero, j'r, a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, do certify that the above and foregoing is a true and correct copy of the instrument of writing or resolution annexed to and made part of an act of agreement between Warner Van Norden and the Mississippi and Mexican Gulf Ship Canal Co., executed before me on November 23rd, 1872, extant in my notarial archives.

New Orleans, May 30th, 1876.

[SEAL.] (Signed) ANDREW HERO, J'R,
Not. Pub.

(Act referred to hereinabove transcribed on page 48.)

155 *Judgment in No. 7032, referred to in note of evidence.*

November term, 1873.

NEW ORLEANS, *Tuesday, April 7th*, 1874.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

MORTON, BLISS & Co.
vs.
MISSISSIPPI AND MEXICAN GULF SHIP CANAL Company et al. } No. 7032.

By reason of the verdict and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiffs, Morton, Bliss and Co., do recover from Mississippi and Mexican Gulf Ship Canal Company and from Cyrus Bussey, in solido, the sum of twenty-four thousand eight hundred and seventy-four $\frac{27}{100}$ dollars, and costs of suit; and that the 135 shares of the capital stock of said Mississippi and Mexican Gulf Ship Canal evidenced by the certificates on file, be sold, and petitioners' privilege on the proceeds thereof recognized and enforced.

Order allowing interest on judgment.

156 The rule taken on 8th instant was called; Carleton Hunt for movers, Billings and Hughes for defendants in rule; when, after hearing argument, it is ordered that the rule be made absolute; that the judgment entered herein on the 7th April, 1874, shall bear interest at the rate of 7% per annum from 28th May, 1873, till paid.

Judgment rendered April 7th, 1874.
Judgment signed April 11th, 1874.

(Signed) E. H. DURELL
Judge.

Resolution of board of directors of the Miss. & Mex. Gulf Canal Co., offered by def'd't and referred to in note of evidence.

Resolved, That the president or treasurer be authorized to mortgage or pledge the machinery of the company to secure any loans which may be necessary for said company and any such pledge or mortgage shall bind the company.

Minuites of the company from May 21st, 1872, &c., offered by defendants and referred to in note of evidence.

NEW ORLEANS, *May 21st*, 1872.

A special meeting of the board was held this day at the office of the co. at 12 m.

157 Present, Mess. Folger, Lynch, Bussey, Noyes, and Slayback.

The minutes of the last meeting were read and approved.

A resolution introduced by General Bussey was unanimously passed, to allow J. O. Noyes, from the funds of the co., a sum on a/c of certain incidental expenses incurred by him, said not to exceed $150.00.

The treasurer stated that, owing to certain legal difficulties, which would prevent the pledging of the machinery as security for advances, he had been compelled to make a new arrangement with M'r Van Norden in certain points of the agreement adopted at the last meeting, upon which he requested the sanction of the board, which, after due reading, was agreed to.

NEW ORLEANS, *June 1st*, 1872.

A meeting of the stockholders was held at the office of the co., 183 Common street, at 12 m., in pursuance of a call advertised according to law.

M'r Milton Benner was appointed teller.

158 The undersigned, appointed teller at an election for directors for the coming year, hereby states that he has carefully recorded and counted all the votes cast, and finds that the following stockholders received the votes set opposite their names:

Lafayette Folger	11855
John Lynch	11855
J. L. Gubernator	11855
C. E. Slayback	11855
Cyrus Bussey	11855
J. O. Noyes	11855
M. Benner (Milton Benner)	11855
Thomas H. Hunt	11856
E. P. Champlain	11855

And he hereby declares each as having received a plurality of all the votes cast, and that the above gentlemen have been elected as directors of the company for the coming year. No other business bein' brought before the meeting, it then adjourned, subject to call.

N. P. RICE, *Sec.*

Continuation of minutes of May 21st, '72.

Agreement made this eighteenth day of May, 1872, between the Miss. and Mexican Gulf Ship Canal Company and W. Van Norden, all of this city.

1st. It is hereby agreed between said canal co. and said W. Van Norden

that said W. Van Norden shall retain all the warrants issued by
159 the city of New Orleans to said canal co. for work done by said company before the first day of April, 1872, to be his own, and shall balance the account to that date and surrender to said canal co. all notes given to said W. Van Norden by them, leaving in the hands of said W. Van Norden an excess in amount of warrants taken at their face value of thirty thousand dollars ($30,000) over the amount advanced by him to canal company.

2d. That all warrants issued by the city of New Orleans for work done by said company in accordance with No. 30 of the legislature of Louisiana, of 1871, and of ordinances passed by the council of the city of New Orleans in compliance therewith, for dredging the drainage canals prior to May 1st, 1873, shall be delivered to said W. Van Norden, who shall credit the company with the same at the rate of 82½ cents on the dollar, except as provided in paragraph nine (9) of this agreement.

That for the work done in April, 1875, and each month thereafter, until and including April, 1872, the advance shall be $25,000 dollars, the difference between said advance and the amount of warrants re-
160 ceived at 82½ cents on the dollar, to be paid by either side, as the case may be, on receipt of the warrants after the close of the month except as provided by paragraph 9 of this agreement.

4th. That in addition to the above, during the month of May, 1872, shall be advanced to said canal co., by said W. Van Norden, the sum of ten thousand dollars, and during each month thereafter the amount of twenty thousand dollars, until the excess of advances over credits from proceeds of warrants at 82½ cents on the dollar shall amount to seventy-five thousand dollars. That for these extra advances the company shall give its drafts signed by the treasurer of the company, as follows:

One payable November 1st, '72, for 10,000.
Two payable December 1st, '72, for each 10,000.
One payable Jan'y 1st, '73, for 20,000.
One " Feb'ry 1st, '73, " 25,000.
A total of $75,000.

These drafts shall be made on said W. Van Norden to the order of E. C. Palmer & Co., excepting one for $10,000, due Dec'r 1st, '72,
161 which shall be to the order of the treasurer of said co. Interest at the rate of eight per cent. per annum shall be paid monthly on the amount in use of these extra advances. The said canal co. binds itself to pay the above-described drafts at maturity, and in the event of the said canal co. failing so to do, the said W. Van Norden is hereby authorized to deduct the amounts of the same from the monthly receipts from the city of New Orleans should he desire to do so, or from any funds of the company in his hands.

5th. That the advances for each month shall not be made until the warrants are received from the city of New Orleans for the work done during the preceding month.

6th. That, should the law or ordinances under which the said canal co. is now acting be changed, the said W. Van Norden shall have the right to cancel this contract.

7th. That said company shall subrogate to said W. Van Norden all its interest in their contract with the city, and all the rights, privileges, and franchises derived by said co. from act of the legislature No.
162 30, session of 1871, and the ordinances of the city passed in accordance therewith.

8th. Section omitted.

9th. That should the "new consolidated loan" authorized by art. 73, session of 1872, of the legislature of Louisiana not be negotiated by the city of New Orleans or its fiscal agent before the first of August, 1872, at the legal limit, to wit, ninety cents or more on the dollar, then said W. Van Norden shall have the right to exchange the warrants issued monthly by the city of New Orleans for bonds of said "new consolidated loan," and to sell said bonds at once at the current market rates, and should they nett less than eighty-one and three-quarters cents on the dollar, he shall have the right to reserve as his own seven and one-half per cent. of the face of said bonds, the remainder of the amount to be credited to the company, and the amount of proceeds of such sales, less the seven and one-half per cent. of the bonds as aforesaid, shall be the amount to be credited monthly to the company, instead of as provided by paragraph three of this agreement, and the excess
163 advanced by the said W. Van Norden under the terms of paragraph three of this agreement shall be at once refunded by said co., calculating from April 1st, 1872.

10th. That, whenever said W. Van Norden shall request it, dredge-boats No. 1 (now working on the line of the old Carrollton Railroad), No. 2 (now working in Orleans st.), No. 4 (now working in Orleans st.), and the Metarie Ridge dredge-boat, purchased from the city of New Orleans, with the derricks accompanying and working with the same, three in number, shall be transferred by said company to him, as additional security for the money to be advanced by him.

Signed in duplicate. New Orleans, La.

LAFAYETTE FOLGER,
President M. & M. G. S. Canal Co.
W. VAN NORDEN.

Witness.:
LOUIS HALL.

Testimony.—Filed June 5th, 1876.

W. VAN NORDEN
vs.
MORTON, BLISS & CO.

CYRUS BUSSEY recalled, and asked by counsel for Morton, Bliss & Co.:

164 In the two chancery suits 7372 and 7443, you have testified in one case relative to a garnishment against the city of New Orleans, in the other to the seizure of dredge-boat No. 3, and on giving your testimony in suit 7372, did you intend to confine it to that suit?

A. I intended that my answer should apply to the suit about the dredge-boat pledged to Morton, Bliss & Co.

Ordered by the court that either party may use the testimony taken in one case and apply it to the other, and that the witnesses may be cross-examined in rebuttal.

Defendants offer the testimony of C. Bussey and the testimony of Folger in 7372, corroborating the testimony of Bussey (transcribed on page 165 of this transcript).

Plaintiff renewes all his objections to the testimony.

Defendants offer (3) three documents, 20 (transcribed on page 48), 21 (transcribed on page 36), 22 (transcribed on page 183 of this transcript).

The testimony of R. S. Adley is offered in evidence for complainant (transcribed on page 188 of this transcript).

165 *Testimony of C. Bussey in 7372.*

U. S. c't c't. In equity.

WARNER VAN NORDEN
vs.
MORTON, BLISS & Co. } No. 7372.

Interrogatories to witnesses.

Interrogatories to be administered to witnesses to be produced, sworn, and examined in a certain cause depending in the circuit court of the United States, wherein Warner Van Norden is complainant, and Morton, Bliss & Co. are defendants, that is to say:

First interrogatory. Do you know the parties complainant and defendants in the title to these interrogatories named, and any or which of them, and how as connected with the Miss. & Mex. Gulf Ship Canal Company, and were you connected with the Mississippi and Mexican Gulf Ship Canal Company?

Second interrogatory. Were you present at a meeting of the directors of the Miss. & Mex. Gulf Ship Canal Company on or about November 20th, 1872, and was the complainant, Warner Van Norden, present? and if yea, was there a resolution offered at the said meeting by the said Warner Van Norden, in pursuance of which the act of November 22d, 1872, before A. Hero, j'r, notary public, was subsequently
166 passed, which act is marked "Exhibit 2," and hereunto attached (transcribed on page 36 of this transcript)? If you say that the said Warner Van Norden offered such a resolution and that the same was adopted, and that the act of November 22d, 1872, was passed in pursuance thereof, please state under what circumstances such resolution was passed, what the consideration actually was, and what the said Van Norden stated on this subject, whether the indebtedness of the said company to the said Warner Van Norden was ascertained, and what that indebtedness, if any, was, and whether the proceedings at the said meeting were lawful and regular, and if you say they were not, how otherwise?

Third interrogatory. At the said meeting was any provision made for the payment of the creditors of the company, and particularly of Morton, Bliss & Co., and what was the debt due by the company to the said Morton, Bliss & Co., defendants in this case?

Fourth interrogatory. At the said meeting did anything transpire relative to the pledge of dredge-boat No. 3, which is marked
167 "Exhibit 1," and annexed to the defendant's answer, and do you know when that pledge was authorized by the said company? If you do, state when and how.

Fifth interrogatory. Did the said Warner Van Norden covenant and agree, and was it covenanted and agreed between him and the said company at the said meeting or before or afterwards, that he should provide for paying the debts of the company, and if you say that it was so agreed by him, state when and how and what was the undertaking regarding the same by the said Warner Van Norden?

Sixth interrogatory. Were you present at any other meeting, formal or informal, of the directors of said company, or any of them, and

Warner Van Norden, the complainant, at which the said resolution was canvassed and considered with a view to carrying it out, and you say whether anything was then and there stated by the said Van Norden regarding the creditors of the said company, and particularly
168 Morton, Bliss & Co., and the said pledge of the dredge-boat No. 3, and whether the act of November 22d, 1872, already referred to as Exhibit 2, was not passed in pursuance of said resolution of November 20th or thereabouts, together with the said agreements and undertakings on the part of the said Van Norden, and if yea, precisely what those agreements and undertakings were, so far as they affect the defendants Morton, Bliss & Co.?

Seventh interrogatory. Are you acquainted with a certain agreement between the Mississippi and Mexican Gulf Ship Canal Company and Warner Van Norden of May 18th, 1872, providing among other things for the transfer unto the said Van Norden of dredge-boats 1, 2, & 4 of the said company as additional security for the money to be advanced by him? (Said agreement is annexed as Exhibit No. 3.) Do you know by what authority said agreement was entered into, and why the dredge-boat No. 3 pledged according to the act of May 8th, 1872 (annexed as Exhibit No. 4), was not included with the other dredge-boats of the company?

169 Eighth interrogatory. Do you know the act of the 22d May, 1872, passed before A. Hero, j'r, notary public, purporting to transfer all and singular the rights, title, and interest of the said Mississippi and Mexican Gulf Ship Canal Company to the privileges and advantages granted to it under act No. 30 of the general assembly of this state for the session of 1871? (Said notarial act is annexed and marked "Exhibit No. 5.") Was the arrangement therein set forth, and a loan of $150,000.00, as therein recited, really and actually made, and was the said act regularly acted on by the said company? If you answer no, explain fully how and why the said indebtedness of $150,000.00 was so recited, and how the said act was irregular and unauthorized.

Ninth interrogatory. Are you acquainted with the notarial act of November 23rd, 1872, purporting, among other things, to pay unto Warner Van Norden *of* $15,000.00 monthly out of the revenues of the
170 Mississippi and Mexican Gulf Ship Canal Company, and after deducting 20% of the remainder of such revenues for the payment of other creditors of the said company, to apply the residue of such revenues to the extinction of the indebtedness of the said company to the said Van Norden according to the act of the 22d of May, 1872, before A. Hero, j'r, herein already referred to? (Said act of November 23rd, 1872, is annexed as Exhibit No. 6, and transcribed on page 48 of this transcript.) Who were the creditors referred to in this exhibit, and were Morton, Bliss & Co., the defendants, among them, and who was to keep the accounts of receipts and expenditures under this act, and have such accounts been rendered and what do they show? And did you ever hear said Warner Van Norden say that the dredge-boats and machinery of the said company were only to be held by him until he could work out his claim, when he would retransfer them to the company, or make any statement to that effect, and state that it made no difference what
171 price was named for them, or any similar statement or statements? If yes, state when and where he made such statements.

Tenth interrogatory. Was Cyrus Bussey treasurer of the Mississippi and Mexican Gulf Ship Canal Company when the pledge of May 8th, 1872, of the dredge-boat No. 3 was made to Morton, Bliss & Co., and

did he ever say in your presence that said pledge was worthless and fraudulent, or anything to that effect?

Eleventh interrogatory. Do you know of any other matter or thing, or can you say anything touching the matters in question in this cause? If yea, declare the same as fully and at large as if you had been particularly interrogated in relation thereto.

(Signed) CARLETON HUNT AND
WILLIAM H. HUNT,
Solicitors for Def'd'ts.

(Cross-interrogatories transcribed on page 54 of this transcript).

Testimony of Cyrus Bussey.

NEW ORLEANS, *April 13th*, 1876.

CYRUS BUSSEY, a witness, produced, sworn, and examined on behalf of the defendants, for answer to the interrogatories and cross-interrogatories, deposes and says:

172 To the 1st interrogatory he saith: My name is Cyrus Bussey; my age is forty-two years; my residence New Orleans; I know the party complainant and defendants in the title to these interrogatories. I was treasurer of the Mississippi and Mexican Gulf Ship Canal Company in 1872 and 1873.

To the 2d interrogatory he saith: I was present at a meeting called of the directors of the Mississippi and Mexican Gulf Ship Canal Company about the 20th November, 1872, at which La Fayette Folger, John L. Gubernator, M'r Benner, E. T. Champlin, and John Lynch were present. Van Norden appeared before the board with a set of resolutions prepared, authorizing the company to transfer to him the machinery, dredge-boats, derricks, and other property, for the purpose, as he stated, of enabling him to work out what the company owed him. I and M'r Folger, the president of the company, had no notice that the board contemplated making such a transfer and objected to the transfer on the ground that it would be unjust to the other creditors

173 of the company. Van Norden stated that the transfer was a mere matter of form, and that he would retransfer the property back to the company as soon as he worked out the amount due him. The resolution fixed the price of the machinery at $50,000. I objected to the price as it was not one-half of the value of the machinery. Van Norden stated that it mattered not what price was fixed for the machinery, as the sale was a matter of form, and the company were to be placed back in possession at the same price. I further objected to the transfer of the dredge-boat No. 3, as that boat was already pledged to Morton, Bliss & Co., in good faith, and Van Norden agreed to accept the transfer subject to the debt of Morton, Bliss & Co. as he desired the use of the dredge in the prosecution of the work. I further insisted that Van Norden should set apart a certain portion of the earnings, which portion was fixed at 20%, which should be paid over to the officers of the company to be used in liquidating the debts due to other parties, which he consented to do. I further opposed the trans-

174 fer on the ground that no statement of Van Norden's account had been submitted to the officers of the company for verification, and did not know that the account as presented was correct. When the vote was taken I and Lynch voted against the resolution, and Gubernator, Benner, and Champlin voted for it. Folger, the president of the company, was opposed to the resolution and would have voted against it if he

could, and so expressed himself. Van Norden presented an account purporting to show the amount due him by the company, which the board had no time to examine, and which was not verified. The meeting was a called meeting. I am not able to say whether the proceedings were lawful or not.

To the 3rd interrogatory he saith: I objected to the transfer of the machinery to Van Norden as I, as treasurer, had pledged to Morton, Bliss & Co. the dredge-boat No. 3, and derrick, which I held for their benefit to secure them for monies loaned the company, to the amount of
175 $25,000 or more. Van Norden agreed to accept the transfer subject to the pledge made to Morton, Bliss & Co. This pledge the company, through its legally constituted officers, recognized as in force and binding on the company, and but for the agreement of Van Norden to assume this liability, the transfer of the boat would not have been made.

To the 4th interrogatory he saith: This interrogatory is answered in my answer as given to the above (third) interrogatory. The act of pledge of May 8th, 1872, to Morton, Bliss & Co. was executed by the authority and consent of the board of directors at a meeting held March 2, 1872, authorizing the president or treasurer to mortgage or pledge the machinery. The resolution was passed at a meeting of the board held March 2d, 1872, and reads as follows:

"Resolved, That the president or treasurer be authorized to mortgage or pledge the machinery of the company to secure any loans which may be necessary for said company, and any such pledge or mortgage shall bind the company."

176 To the 5th interrogatory he saith: Van Norden did agree with the company to set apart 20% of the earnings of the company and the difference between $15,000 per month and the actual expense, which was understood to be a much less sum, to be used to pay other creditors of the company, and he further agreed to accept and recognize the pledge of Morton, Bliss & Co. to the dredge-boat No. 3 and derrick, which I, as treasurer of the company, held to secure them for the debt which the company owed them. He made this agreement before the resolution was passed authorizing the transfer of the machinery to him, and further agreed the next day at an informal meeting held at M'r Benner's office to the same effect.

To the 6th interrogatory he saith: At an informal meeting held at the office of M'r Benner, at which Lafayette Folger and S. D. Moody were present, Van Norden stated that he would accept the transfer of the dredge boat No. 3 subject to the claim of Morton, Bliss & Co., and
177 that he would pay to the company the difference between the actual cost of working the dredge-boats and the sum of $15,000 per month, and that he would pay the further sum of 20% out of the earnings of the company to the company to be used in liquidating the debts of other persons. I made a memorandum in writing of the agreement to pay to the company the difference between the $15,000 per month and the actual expenses. Van Norden did state as above and agreed as sworn to by me.

To the 7th interrogatory he saith: I know of a certain agreement between the Mississippi and Mexican Gulf Ship Canal Company and Van Norden about May 8th, 1872, for the transfer to said Van Norden of the dredge-boats Nos. 1, 2, and 4, of the company, as security for money to be advanced by him. The agreement was entered into by M'r Folger, president of the company, who had authority from the board of directors. The dredge-boat No. 3 was not pledged to Van Norden because

it was pledged to Morton, Bliss & Co., which fact Van Norden
178 knew.

To the 8th interrogatory he saith: I do not know anything of the act of the 22d May passed before A. Hero, j'r, notary public, purporting to transfer the right, title, and interest of the company, under act No. 30 of the general assembly, to Van Norden; never knew of any loan of $150,000 having been made with Van Norden, but do know that a loan was made, amounting to about $100,000, to secure which the machinery of the company, not including the dredge boat No. 3 and derrick, was to be transferred to Van Norden whenever he should call for it.

To the 9th interrogatory he saith: I know the notarial act of November 22d, 1872, purporting among other things to pay Van Norden $15,000 per month out of the revenues of the Mississippi and Mexican Gulf Ship Canal Company after deducting 20% of the remainder of said revenue.

I opposed the passage of this act on the ground that $15,000
179 per month was far too much, and it was for this reason that I made a memorandum of the agreement with Van Norden to pay back to the company the difference between the actual expense of working the boats and the $15,000 per month provided for in the contract. The 20% referred to was understood to be used in payment of debts due by the company to other persons than Van Norden. Van Norden agreed to make monthly reports of receipts and expenses to the company, which he failed to do. As treasurer of the company I repeatedly asked him for such statements, but was unable to get any satisfaction. I did hear Van Norden say, and it was positively understood, that the transfer of the machinery to him was not a sale in fact, but as security to authorize him to work out his claim against the company. I would not have consented to the transfer of the machinery to Van Norden for double the amount if I had not understood that the pretended sale was not a sale.

180 To the 10th interrogatory he saith: I was treasurer of the Mississippi and Mexican Gulf Ship Canal Company when the pledge of May 8th, 1872, was made to Morton, Bliss & Co. of the dredge-boat No. 3. I never did say that said pledge was worthless or fraudulent, or anything to that effect, but I did say that it would be a fraud to again transfer the dredge-boat No. 3 to Van Norden until the debt due Morton, Bliss & Co. was satisfied.

To the 11th interrogatory he saith: One strong ground of my opposition to the transfer of the dredge-boat No. 3 to Van Norden, was the fact that I as treasurer had pledged the said dredge-boat in good faith to Morton, Bliss & Co., and was unwilling that the property should pass out of my possession as treasurer of the company until the claim of Morton, Bliss & Co. was provided for, and I fully understood Van Norden to receive the transfer of the dredge-boat No. 3 subject to Mor-
181 ton, Bliss & Co.'s claim, which I supposed he would provide for, as he held the boat and used the same in the prosecution of his work. The day this transfer of the machinery to Van Norden the legal officers of the company recognized Morton, Bliss & Co.'s right and held the property in their possession as Morton, Bliss & Co.'s agent, and only surrendered the boat to Van Norden on his assurance that he would accept it on the same condition.

(Cross-interrogatories transcribed on page 54.)

Witness having already under oath fully answered the cross-interrogatories propounded to him by complainant in the case of Warner Van Norden vs. Morton, Bliss & Co., No. 7443, United States circuit court, district of Louisiana, adopts all and singular the said answers as the

answers he desires to make to the cross-interrogatories herein propounded, and enumerated them in their general character and by number as follows, viz:

(The answers transcribed on page 98 of this transcript.)

182 *Testimony of Lafayette Folger in cause numbered* 7372.

United States circuit court, district of Louisiana.

WARNER VAN NORDEN } 7372.
vs.
MORTON, BLISS & Co. }

Personally appeared Lafayette Folger, who, being duly sworn to testify the truth in answer to the interrogatories and cross-interrogatories propounded to him in the above-entitled cause, deposes and says that he is sixty years of age, and resides in New Orleans, L'a; that he has read the said several interrogatories and cross-interrogatories, as also the several answers of Cyrus Bussey thereto; and, answering the same, adopts the answers of the said Cyrus Bussey as his answers, with the exceptions, modifications, and explanations as follows, to wit:

1st. That he was president of the Mississippi and Mexican Gulf Ship Canal Company.

2d. As to all the answers wherein it is stated by C. Bussey that Van Norden assumed the debt of Morton, Bliss & Co., deponent says
183 that, according to his understanding, Van Norden did not assume said debt; also wherein it is stated that Van Norden accepted the transfer of Dredge-boat No. 3 subject to the claims of Morton, Bliss & Co., deponent says that Van Norden accepted the transfer of Dredge-boat No. 3 subject to the pledge of Morton, Bliss & Co. In other respects he adopts all of said answers.

And further he saith not.

(Signed) LAFAYETTE FOLGER.

Subscribed and sworn before me April 15th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Document marked 22, offered by the defendant June 5th, 1876.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-sixth, before
184 me, Andrew Hero, jr, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Lafayette Folger, president of the Mississippi and Mexican Gulf Ship Canal Company, a duly-organized corporate body of this city, and herein acting in his capacity as president thereof, under and by virtue of a resolution of the board of directors thereof, passed at their meeting held on the twenty-first inst., a duly-certified copy of which said resolution is hereto annexed for reference; which said Lafayette Folger declared that whereas the work done by said Mississippi and Mexican Gulf Ship Canal Company under the provisions of act No. 30 of the legislature of this State of the session of 1871, entitled "An act to provide for the drainage of New Orleans," is and has been always paid for in warrants, as provided for by section 8

of the aforesaid act, owing to the want of funds in the city treasurer therefor; which said warrants are only convertible in cash at a discount of twenty-five per cent. and more;

185 And whereas the expenditures of said company in constructing and executing the work provided for in said act are and have to be paid in cash, and it has been deemed judicious by the board of directors of said company to make some arrangements by which the necessary cash can be obtained;

And whereas Warner Van Norden of this city has agreed to advance and furnish the said Mississippi and Mexican Gulf Ship Canal Company during the ensuing twelve months the sum of one hundred and fifty thousand dollars to meet and discharge the expense in doing said work, upon the condition that the said Van Norden shall be paid and reimbursed all sums of money that may be so advanced out of the warrants, money, or other revenues which may be obtained from the city of New Orleans under the provisions of the aforesaid act No. 30 of the legislature of this State, and also that said sum of one hundred and fifty thousand dollars shall be given in such installments as may be deemed necessary as the work progresses upon the note or obligations of said company:

186 Now, therefore, in consideration of the premises, and in order to secure the payment and reimbursement of said loan of one hundred and fifty thousand dollars, together with all interest thereon, that may be furnished and advanced by said Warner Van Norden in the premises, said Lafayette Folger, moreover, declared in his said capacity of president, and for and on behalf of said Mississippi and Mexican Gulf Ship Canal Company, that he does by these presents transfer, assign, and set over unto the said Warner Norden, here present, accepting for himself, his heirs, and assigns, all and singular the right, title, interest, claim, and demand of said Mississippi and Mexican Gulf Ship Canal Company in and to the privileges and advantages granted unto it under the aforesaid act No. 30 of the legislature of this State, entitled "An act to provide for the drainage of New Orleans," as well as in and to all sums of money, profits, and benefits that may enure or be realized by virtue of the performance and execution of the work therein provided for. And said Lafayette Folger, in his aforesaid

187 capacity, moreover transfers and assigns unto said Warner Van Norden any and all certificates, cash, warrants, or bills that may be made out and delivered by the surveyor, administrator of public accounts, or other officers of the city of New Orleans, for any and all work done and performed by said company under the provisions of said act, hereby authorizing and empowering said Van Norden to demand and receive all such money, warrants, or bills from said surveyor, administrator of public accounts, or other officers, and to collect and receive the amount thereof.

Thus done and passed in my office at New Orleans aforesaid, in the presence of George Cenas and Paul A. Conrad, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, on the day and date aforesaid.

(Original signed) LAFAYETTE FOLGER,
President M. & M. G. Ship Canal Co.
W. VAN NORDEN.

GEO. CENAS.
P. A. CONRAD.

ANDREW HERO, J'R,
Not. Pub.

188 A true copy of the original (duly stamped) on file and of record in my office.
New Orleans, La., April 3d, 1874.
[SEAL.] (Signed) ANDREW HERO, J'R,
Not. Pub.

Hearing and continuance.—Extract from minutes of June 5th, 1876.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

This cause came up again pursuant to adjournment, and after argument, the case is continued till 7.30 p. m.
And the court took a recess till 7.30.
At 7.30 the trial of this cause was resumed, and after hearing evidence and argument, the cause is continued till Wednesday, 7th instant, at 9 a. m.

Testimony of R. S. Adley.—Filed June 6th, 1876.

U. S. circuit court.

W. VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

R. S. ADLEY:

189 I am now employed by M'r Van Norden; that is, I was until M'r Van Norden sold the dredge-boats to the city. I was working on dredge-boat No. 3. I have been engineer of dredge-boat No. 3 since September, 1870, with the exception of 5 or 6 months, when I was transferred to another boat. I was in charge of dredge-boat Number 3 during the entire year of 1872. I cannot remember the date of the transfer to M'r Van Norden, but I am of opinion that he became the owner of dredge-boat No. 3 in 1872. Prior to M'r Van Norden becoming the owner of dredge-boat No. 3, I was employed by the Mississippi and Mexican Gulf Ship Canal Company. Up to the time of the transfer to Van Norden the Mississippi and Mexican Gulf Ship Canal Company was in possession of dredge-boat No. 3. Dredge-boat No. 3 was not, to my knowledge, in the possession of any one other than the Mississippi and Mexican Gulf Ship Canal Company and M'r Van Norden during the year 1872. I was in charge of dredge-boat No. 3, and I never was notified that any one other than the Mississippi and Mexican
Gulf Ship Canal Co. and M'r Van Norden was ever in possession
180 of said dredge-boat. I had charge of the derrick and other machinery attached to dredge-boat No. 3, and since 1870 I have been employed as engineer in charge of Dredge-boat No. 3, derrick, etc., either by the Miss. and Mex. Gulf Canal Co. or by M'r Van Norden. No one else employed me.

Cross-examination:

Only three or four days ago I was notified that M'r Van Norden had sold dredge-boat No. 3. It was on the 27th day of May last that I was notified to keep time for the city of New Orleans. My duties have been solely as engineer in charge of dredge-boat No. 3, her derrick, etc.

Question. When you say that Dredge-boat No. 3 and her derrick were not to my (your) knowledge in the possession of others than the canal co. and Van Norden, I suppose you mean you were never notified of any other possession, and that that's all that you mean?

Yes; exactly.

Re-examined:

No one other than M'r Van Norden employed or paid me to
191 take charge of Dredge-boat No. 3.

Question. Did M'r Cyrus Bussey ever ask you to take charge of Dredge-boat No. 3 and derrick? Did M'r Cyrus Bussey ever ask you to take charge of Dredge-boat No. 3 and derrick for him?

Answer. I don't know the gentlemen. M'r Cyrus Bussey never asked me to take charge of Dredge-boat No. 3 and derrick. None other than the canal company and M'r Van Norden ever asked me to take charge of said dredge-boat and derrick.

(Signed) R. S. ADLEY.

Sworn to and subscribed before me this 6th day of June, 1876.

(Signed) F. B. VINOT,
D'y Clk.

Hearing and continuance.—Extract from minutes of June 7th, 1876.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

The trial of this cause was resumed, and after hearing further argument the court took time to advise.

192 *Decree entered and filed June 10th, 1876.*

U. S. circuit court, district of Louisiana.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

This cause came on to be heard on the bill, answer, replication, exhibits, and proofs, and was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed that the bill of the complainant be dismissed, and the injunction heretofore allowed be dissolved and set aside with costs.

June 10th, 1876.

(Signed) EDWARD C. BILLINGS, *Judge.*

Petition and order for appeal.—Filed June 10th, 1876.

United States circuit court, district of Louisiana.

WARNER VAN NORDEN
vs.
MORTON, BLISS & CO. } No. 7443.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The petition of Warner Van Norden respectfully represents:

193 That petitioner is advised and believes there is error to his prejudice in the decree and judgment rendered herein against him and in favor of Morton, Bliss & Co. on the 10th day of June, A. D. 1876, and feeling aggrieved by said judgment, petitioner desires to appeal therefrom.

Wherefore petitioner prays that appeal be granted herein, to operate as a supersedeas, returnable to the Supreme Court of the United States on the 2d Monday in October, 1876, on petitioner's giving bond and security in such an amount as may be fixed by the court.

Petitioner further prays that defendants and appellees be duly cited to appear and answer said appeal.

(Signed) LACEY & BUTLER,
Solicitors for W. Van Norden.

An appeal is allowed in this case, as prayed for and according to law, the same to operate as a supersedeas, the appellant giving bond in the sum of $20,000, said appeal returnable to the Supreme Court of the United States on the 2d Monday of October, 1876.

June 10th, 1876.

(Signed) EDWARD C. BILLINGS, *Judge.*

194 *Bond for appeal.—Filed June 22d, 1876.*

Know all men by these presents that we, Warner Van Norden, as principal, and Ed. C. Palmer, as surety, are held and firmly bound in solido unto Morton, Bliss & Co., in the full and just sum of twenty thousand dollars, to be paid to the said Morton, Bliss & Co., their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents; sealed with our seals and dated this 14th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, sitting in equity, in a suit depending in said circuit court, wherein Warner Van Norden is complainant, and Morton, Bliss & Co. are defendants, judgment was rendered against the said Warner Van Norden, and the said Warner Van Norden, complainant, having obtained an appeal
195 and filed an order therefor in the clerk's office of the said circuit court, with a view to reverse the judgment in the aforesaid suit, and which said appeal is made returnable before the Supreme Court of the United States, to be holden at Washington the 2d Monday of October next, 1876:

Now, the condition of the above obligation is such that if the said Warner Van Norden shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) WARNER VAN NORDEN,
Per GEO. S. LACEY, *Att'y.* [SEAL.]
W. VAN NORDEN. [SEAL.]
E. C. PALMER. [SEAL.]

Sealed and delivered in the presence of—
(Signed) S. D. MOODY.

U. S. circuit court.

WARNER VAN NORDEN
vs.
MORTON, BLISS & Co. } No. 7443.

Edward C. Palmer personally came and appeared before me, the undersigned authority, and being by me duly sworn, did depose and say
that he is over twenty-one years of age; resides in the city of
196 New Orleans, State of Louisiana; he is the owner of a sugar plantation in that State, and of real estate in the said city of New Orleans; that he is also the owner of moveable property and effects; that he is worth more than twenty thousand dollars over and above all his debts and liabilities.

Further, deponent says that he is now a good, solvent, and sufficient security for the payment of the bond signed by him and filed in the above-entitled suit, for the purpose of carrying the said cause by appeal to the Supreme Court of the United States.

(Signed) E. C. PALMER.

Sworn & subscribed before me this 22d June, A. D. 1876.

(Signed) CHA'S S. RICE,
U. S. Comm'r, Dist. of La.

The within bond, both as to form and amount and as to sufficiency of surety, is approved.

(Signed) EDWARD C. BILLINGS, *Judge.*

197 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 196 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Warner Van Norden versus Morton, Bliss and Company, No. 7443, of the docket, so far as the same now remain of record or on file in said court, with the exception of the minutes of the Mississippi and Mexican Gulf Ship-Canal Company, containing protest of Slayback and Lynch of 3rd August, 1872; also, communication from Van Norden to the company on page 40 of the said minutes; also, resolution on page 44 of the said minutes; also contract, page 15, and finally letter of Van Norden, on page 13 of said minutes—all of which evidence has been mislaid and cannot now be found—specially referred to in the note of evidence, page 140 of this transcript.

Witness my hand and the seal of said court at the city of New Orleans this 30th day of September, A. D. 1876.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate

is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans in said district this 30th day of September, A. D. 1876.

EDWARD C. BILLINGS, *Judge.*

198 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Morton, Bliss & Co., and the several members of said firm, viz, Levi P. Morton, George Bliss, and George S. Bowdoin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition & an order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Warner Van Norden is complainant and appellant and you are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said Warner Van Norden, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23d day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

199 (Indorsed:) United States circuit court. No. 7443. Warner Van Norden vs. Morton, Bliss & Co. Citation.

Marshal's return.

I hereby certify that on the 18th day of July, 1876, at the city of New York, in my district, I personally served the within citation upon the within-named Morton, Bliss & Co., by exhibiting to George Bliss, a member of said firm, the within original, and at the same time leaving with him a copy thereof.

Dated July 25, 1876.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

(Indorsement on cover:) No. 225. Warner Van Norden, appellant, vs. Levi P. Morton, George Bliss, and George S. Bowdoin, as Morton, Bliss & Company. Louisiana C. C. U. S. Filed 12th October, 1876.

C

IN THE

Supreme Court of the United States.

October Term, 1878.

WARNER VAN NORDEN,

APPELLANT,

vs.

LEVI P. MORTON ET AL.

No. 225.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR APPELLANT.

The bill in this case prays for an injunction to restrain the appellees from proceeding to sell under their execution on a final judgment in No. 7,032 on the law side of the court, issued against The Mississippi and Mexican Gulf-Ship Canal Company, a certain dredge-boat No. 3.

The complainant claims ownership under the said Ship-Canal Company by purchase, November 22, 1872, by public act before Hero, a notary public of the city of New Orleans, and that he has been damaged $5,000 by said seizure, &c.

The defendants claim to be *pledgees* under the said Ship-Canal Company by a sale, grant, and conveyance

made to them in order to secure the payment of certain advances, a portion of which is the judgment in No. 7,032, as aforesaid, on May 8, 1872.

That complainant's title was subsequent and subordinate to the defendants' rights under this transfer, and their allegation is that "complainant agreed and promised that "these respondents should have and enjoy, unimpaired "by any temporary possession on his part, the right and "privilege to seize and sell dredge-boat No. 3 to satisfy "the debt of said company," &c., &c.

That complainant was aware of this agreement and respondents' claim, and took his title upon an express undertaking to redeem the pledge and pay the debt due to them. Denies the damages; avers that the matters alleged give no right to relief in equity, &c., &c.

Record, pp. 1 to 5 inclusive.

The replication denies these allegations; avers that the pledge, if any, was merged into a mere ordinary moneyed judgment, and thereby the lien resulting therefrom was lost; and at any rate, if respondent's allegations were true, they did not authorize an entire disregard of complainant's title, and he is now entitled to relief to the same extent as if excepted or demurred to.

He pleads the prescription of one and two years under Louisiana law against the attempt made by defendants to treat his title, possession, and right to possession as null, by a direct seizure of his property under execution.

Record, pp. 7, 8, 9.

The bill was dismissed on a final decree, and complainant appealed.

FACTS OF THE CASE.

May 2, 1872. The Mississippi and Mexican Gulf Ship-Canal Company resolved "that the president or treasurer be "authorized to mortgage or pledge the *machinery* of the "company to secure any loans which may be necessary for "said company, and any such pledge or mortgage shall "bind the company."

Record, page 49; Bussey's testimony, p. 31.

May 8, 1872. Under this resolution, the treasurer of the company, Cyrus Bussey, in consideration of ten dollars, granted to defendants, Morton, Bliss & Co., "that "certain dredge-boat and derrick machinery now laying "and being in the city of New Orleans, in the drainage "canal known as Poydras street," &c., &c., to secure certain acceptances to be made for the company, amounting to $71,000. In case of no provision of the funds necessary to pay these acceptances at maturity by the company, Morton, Bliss & Co. were authorized to cause the dredge-boat and machinery to be *seized and sold under executory process*, &c., from any court of competent jurisdiction, &c. The shape of this pledge was that of a *private* act, acknowledged before a notary public, without witnesses. It was *registered* in CONVEYANCE BOOK 104, *folio* 669, *April* 6, 1875. No possession seems to have been had of the dredge-boat and machinery.

Record, page 6; Adley's testimony, page 59.

May 18, 1872. Agreement between Ship-Canal Company and Van Norden, *inter al.*, provided that to secure

the latter, certain dredge-boats and machinery, Nos. 1, 2, and 4, may be transferred to him.

Record, pp. 14, 15, 16; Resolution, p. 43; Act, p. 57; Hero, N. P.

Nov. 22, 1872. Resolution of Directors of Ship-Canal Company, and public act of sale of even date, sell to Van Norden for $50,000, *inter al.*, "dredge-boat No. 3, with steam derrick," &c. Actual delivery was made to Van Norden by the secretary of the Ship-Canal Company, at the date of sale, and Van Norden retained possession up to the seizure of the property, and holds it ever since.

Act on p. 12, *et séq.;* Resolution, p. 46; Testimony, pp. 35, 59, 39.

Nov. 23, 1872. Contract between Ship-Canal Company and Van Norden. The latter agrees to do all the excavations, build levees, and all the work under act of Louisiana legislature No. 30, for 1871, for the drainage of New Orleans, for certain considerations therein mentioned, *inter al.*, certain revenues of the Ship-Canal Company, from which, "after deducting 20 per cent. of the remainder of "said revenue *for the payment of the creditors*" of the company, the residue of said moneys "shall be applied to "the extinction and settlement of the indebtedness now "due and owing by said M. & M. G. Ship-Canal Co."

Record, pp. 16, 17.

April 7, 1872. Judgment for $24,874.27, in favor of Morton, Bliss & Co., and against the Ship-Canal Company, with interest and costs, *with privilege on* 135 *shares of Ship-Canal stock.*

Record, p. 48.

Fi. fa. issued thereon, under which the marshal seized the property claimed in this suit; placed his keeper thereon, and would have proceeded to sell under the writ had he not been enjoined in this suit.

Admission, Rec., p. 42.

June 19, 1875. Injunction issued; bond in $16,000.

Rec., pp. 3–4.

Much discordant testimony was introduced, but it was all regularly objected to and admitted. Its object was to show that Van Norden knew of the prior pledge to Morton, Bliss & Co., and assumed the payment of their debt or accepted the transfer from the Company of dredge-boat No. 3, subject to the pledge of Morton, Bliss & Co. This evidence should be rejected altogether. If all the evidence is considered as admissible, then we submit, as matters of fact:

1st. That there never was a pledge from the Ship-Canal Company to Morton, Bliss & Co., of dredge-boat No. 3, and machinery.

2d. That any assumption by Van Norden of their claim on the company is satisfactorily disproved.

3d. That Van Norden did not accept his transfer subject to the pledge of Morton, Bliss & Co.

From the facts arise the following questions:

First. The title and ownership being in Van Norden, had Morton, Bliss & Co. a legal or equitable right to seize dredge-boat No. 3, and machinery, under their *fi. fa.* against the Ship-Canal Company?

the latter, certain dredge-boats and machinery, Nos. 1, 2, and 4, may be transferred to him.

Record, pp. 14, 15, 16; Resolution, p. 43; Act, p. 57; Hero, N. P.

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2d. That any assumption by Van Norden of their claim on the company is satisfactorily disproved.

3d. That Van Norden did not accept his transfer subject to the pledge of Morton, Bliss & Co.

From the facts arise the following questions:

First. The title and ownership being in Van Norden, had Morton, Bliss & Co. a legal or equitable right to seize dredge-boat No. 3, and machinery, under their *fi. fa.* against the Ship-Canal Company?

Second. Could they have so seized under said execution even had Van Norden assumed the payment of their claim?

Third. Could Morton, Bliss & Co. be justified in their seizure by virtue of any pledge, valid or invalid, *unaccompanied by possession*, whilst Van Norden held both possession and title as owner under a *bona fide* transfer from the Ship-Canal Company?

ASSIGNMENT OF ERRORS.

First. The court erred in dissolving injunction and in dismissing the bill.

Second. And in not perpetuating the injunction with damages; and in not rendering a final decree in conformity to the petitioner's prayer in his bill in equity.

ARGUMENT.

Under Louisiana law, there was certainly no pledge of dredge-boat No. 3 and machinery to Morton, Bliss & Co., for want of any delivery to them of the property.

Louisiana code, 1870, article 3152: "It is *essential* to "the contract of pledge that the creditor be put in possession of the thing given to him in pledge, and, consequently, that actual delivery of it be made to him, unless "he has possession of it already by some other right."

Article 3158: "All pledges of movable property may "be made by private writing, accompanied by *actual delivery*," &c.

Indeed, Morton, Bliss & Co. admit by their actions that they have no pledge or privilege on the dredge-boat No. 3. This is shown—*First.* By their failure to act on their pledge by executory process, as they were entitled to do by the express terms of their alleged pledge. *Second.* By

the silence of their judgment, which is purely personal against the Ship-Canal Company as to any lien or privilege on the dredge-boat No. 3. *Third.* By their seizure under execution of the dredge-boat No. 3 whilst in the possession and under control of Van Norden as owner. *Fourth.* By their averments in their answer to this case, which are inconsistent with the existence of any pledge or privilege in their favor.

Yet they claim to be pledgees by virtue of the act of May 8, 1872, under which they never had possession; and though this pledge to them may be informal, they say, yet Van Norden's title was subsequent and subordinate, and he promised and agreed that Morton, Bliss & Co. should have and enjoy, unimpaired by any temporary possession on his part, the right to seize and sell dredge-boat No. 3 to pay them their claim; that Van Norden took his title upon an express undertaking to redeem the pledge and pay the debt due to them.

If Morton, Bliss & Co. had no pledge of the property, as we have shown, it is quite clear that Van Norden could not have had notice of it. No one is bound to notice an absolute nullity, nor anything else that does not pertain directly to the subject of inquiry. If there had been a valid existing lien on the property, Van Norden would have been bound to notice it; if he had been verbally informed that the property he was about to buy had been already pledged to another creditor, he was bound to ascertain the fact; but if, through any informality in substance or form, the pledge were void—*e. g.*, as in this case—a pledge informal *in substance* for want of delivery of possession, and *informal* for want of a proper act and its due registry in the proper office and *in proper time*, he could disregard the verbal notice and proceed in his own way to complete his own transaction. The mere naked indebtedness of the Ship-

Canal Company to Morton, Bliss & Co., as found by the final judgment of the United States circuit court in their favor and against the Ship-Canal Company, presented no objection whatever to Van Norden's contract. Until the judgment was rendered in favor of Morton, Bliss & Co., it was quite impossible to know, or find out by any inquiry, what liens, privileges, and claims these creditors held on the property of the debtors; for, until liquidated, they could not be ascertained. It was always contingent what the amount intended to be secured would finally be.

II.

When the above views are combined with the evidence in this case, they leave no doubt upon the point that the right of possession, possession and title, were all in Van Norden at the date of the seizure. He was a purchaser for value without notice. And this seems to be the view of the seizing creditors, who, whilst admitting legal possession and ownership in Van Norden, claim that this possession and ownership were subordinate to their right to seize and sell dredge-boat No. 3 to pay their claim; and they further say *that Van Norden took his title upon an express undertaking to redeem the pledge and pay the debt due to them.* We have not the benefit of the reasons of the lower judge for dismissing the bill. He admitted all the parole evidence offered by the defendants in the court below in spite of the objections urged by the plaintiff's counsel. But it seems to us contrary to first principles that these questions can be raised in this case and engrafted on this injunction suit. If tested by the laws of Louisiana, such contracts, stipulations, and agreements are *void* unless reduced to writing. Revised Statutes of Louisiana, sec. 1443, reads: "Hereafter parole evidence shall

" not be received to prove any promise to pay the debt of " a third person," *etc., etc.*

And article 2278 of the Louisiana Code of 1870 reads: " Parole evidence shall not be received * * * to prove " any promise to pay the debt of another." Hence it is abundantly clear than Van Norden cannot here be made liable for Morton, Bliss & Co's judgment on any verbal contract, as is attempted. So that, should your Honors concur with the judge below in his view of the facts, still, the evidence, being clearly contrary to an express statute, should have been ruled out and the facts disregarded. But in this case we submit, with confidence, that even with the parole evidence, the weight of proof is against Morton, Bliss & Co. on all their allegations.

III.

The injunction was issued under article 298 of the Louisiana Code of Practice: "The injunction must be " granted and directed against the defendant himself, in " the following cases: * * *

" 7. When the sheriff in the execution of a judgment " has seized property not belonging to the defendant, and " insists on selling the same, disregarding the opposition " of him who alleges that he is the real owner, or is guilty " of any other act in the execution of his office."

This practice is familiar to this court. It was formerly supposed that where A's goods were seized to pay C's debt on judgment and execution obtained by B against him, that A's remedy was at law and in an action of trespass *vi et armis*, and that A had no relief in equity by an injunction. But this court held in Watson *vs.* Sutherland (5 Wallace, 74–78) that equity alone could furnish an " *adequate*" remedy for A in such cases. It by no means

follows because the article of the Louisiana Code of Practice above quoted specially points out the *statutory* remedy of injunction that, therefore, the proceedings should be *at law*. In Louisiana the writ of injunction is known only as an equitable writ—"The court will mulct in exemplary "damages those who abuse the EQUITABLE remedy of in-"junction."

Dorsey *vs.* Vaughan, 5 Annual, (La.,) 155, *et passim*.

There is therefore no weight in the objection that appellant's relief was at law.

IV.

It seems to us very clear that, under the pleadings, there is but a single issue; and that is, *ownership in Van Norden*. That fact is not only proved by an authentic act of sale from the Ship-Canal Company to Van Norden, but is virtually admitted in the answer.

This seems to be conclusive in the absence of all allegation of simulation and fraud. On this issue of ownership the judgment of the lower court should have been in favor of Van Norden, perpetuating the injunction.

All other questions of subordination of title and rights of property and possession in Van Norden to the right of Morton, Bliss & Co. to seize and sell the property on execution, and of Van Norden's "express promise and "undertaking to redeem said property from the pledge "with which the same purported to have been burdened "in favor of respondents, and to pay the debt of these re-"spondents," were, we think, entirely irrelevant to the issue, and could not be properly litigated in this suit. Because if these facts were fully proved, which they were not, they would not have justified the seizure of the prop-

erty as still belonging to the judgment-debtor, the Ship-Canal Company.

V.

From the defendant's allegations, it is quite impossible to say what the exact pretence is on which he relies as a justification of his seizure of Van Norden's property. If Van Norden's title were a pure simulation, the defendants would be entirely justified in disregarding it, and in seizing the dredge-boat as still the property of the Ship-Canal Company. This is a universal principal of jurisprudence. (13 La., 129 ; 17 *Ib.*, 118 ; 1 An., 69, 135, 262, *et passim;* Emmerson *vs.* Smith, 51 Penna., 91 ; Evans *vs.* Matson, 56 Penna., 54.) The authentic act in such a case would be a mere cloud on the title, a shadow which no one would be bound to fight. And had Van Norden been dispossessed of the dredge-boat, and had he remained passive during its advertisement and sale by the United States marshal, he would have been, under Louisiana law, forever estopped in claiming the property as owner.

As to simulated sales, see Eustis, J., in 13 Louisiana Reports, 129, Hiriart *vs.* Roger, quoting from D'Argentrée and Baldus, strikingly corroborating the language in Bushell's case, (1 Vaughan, 143 :) "Therefore we must take "off this vail and color of words which make a show of "being something, and in truth are nothing."

But it is demonstrated by all the evidence, written and verbal, in the case, that the act of sale is no simulation, but a stern reality, and when the defendant calls it a "*pre-*"*tended*" sale, he can only mean that the dredge-boat should be subjected to his execution.

VI.

It is equally unreasonable to call the act a fraud by the pleadings of defendants, unless it be made "to operate to "the prejudice of their rights upon the dredge-boat No. 3." But Van Norden has the actual possession of the boat as owner. If he holds under the *real* contract of November 22, 1872, and the seizure of the defendants is not made till twenty-eight or twenty-nine months afterwards, during all which time Van Norden has had exclusive custody, and this be regarded as an action by Morton *et al.* to revoke the sale, then the action is barred by the Louisiana statute of two years, and this bar has been specially pleaded in the replication. By agreement the plea of prescription of one year, under article 1994 of Louisiana Code, 1870, is also interposed. (Record, p. 9.) The object of all this is to demonstrate that, if the act of sale to Van Norden be a real contract, Morton, Bliss & Co. were entirely without legal justification in making their seizure in the first place, but should have proceeded to bring an action in proper form to revoke the sale made to Van Norden, which, under such evidence as we find in the record, would of course have failed.

See La. Code, 1870, articles 1968 to 1994, inclusive.

This is on the well-known principle that fraudulent sales are not absolutely void, but have effect until revoked.

The United States *vs.* Hooe *et al.*, 3 Cranch, 73.

"The right of rescission (more correctly, revocation) "is one *summi juris*, which must be used with diligence "and good faith."

1 Smith's Leading Cases, *277, quoting Leichenau *vs.* Horney, 12 Illinois, 336.

VII.

Under these well-settled principles, it is plain that if Morton, Bliss & Co. had applied to a Louisiana court for an execution, and under it had seized this property in the ownership of Van Norden, an injunction would have been the proper remedy, and the only question that could be agitated in the injunction would have been the ownership of Van Norden. The moment this appeared clearly, the injunction would have been maintained; and if Morton, Bliss & Co. claimed relief on account of the matters set forth by them in their defence of the seizure, they would have been obliged to resort to a revocatory action.

We respectfully submit that the proper decree in this case will be to remand the cause with directions to enter a decree to perpetuate the injunction.

Respectfully submitted.

DURANT & HORNOR,
Attys. for Van Norden.

WASHINGTON, D. C., *October* 4, 1878.